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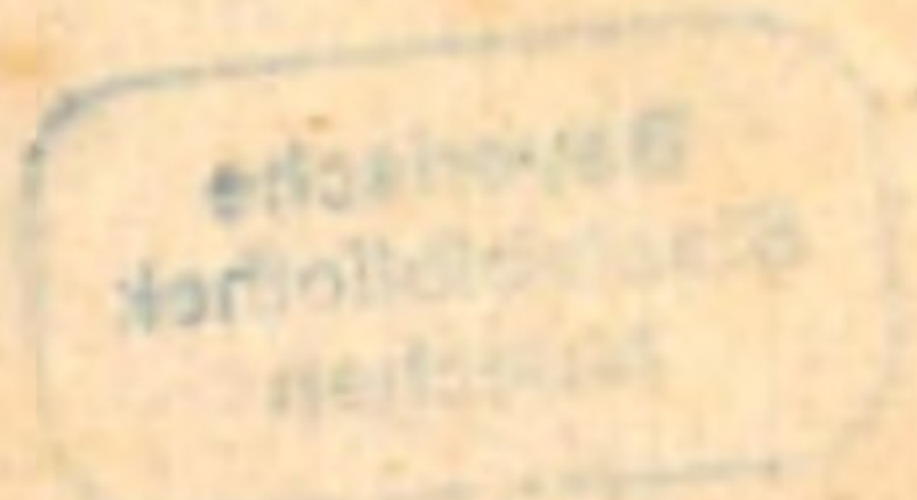
WHITELOCKES · NOTES
UPPON · THE · KINGS · WRITT
FOR · CHOOSING · MEMBERS · OF · PARLEMENT
XIII · CAR · II
BEING · DISQUISITIONS
ON · THE · GOVERNMENT · OF · ENGLAND
BY · KING · LORDS · AND · COMMONS.

PUBLISHED BY CHARLES MORTON, M.D.

SECRETARY OF THE ROYAL SOCIETY, FELLOW OF THE SOCIETY
OF ANTIQUARIES, AND OF THE IMPERIAL LEOPOLDINE AND
PETERSBURG ACADEMIES, FIRST UNDER LIBRARIAN OF THE
BRITISH MUSEUM, AND PHYSICIAN TO THE FOUNDLING
HOSPITAL.

VOLUME I.

LONDON PRINTED BY W. STRAHAN
FOR ANDREW MILLAR IN THE STRAND
IN THE YEAR MDCCLXVI.



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UPON · THE · KINGS · WRITT
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CONTENTS OF VOLUME I.

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THE following COMMENT, upon the WRIT for
choosing Members of Parliament; addressed to
YOUR MAJESTY'S Predecessor, King CHARLES II. by
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YOUR MAJESTY'S,

Most dutiful, and loyal,

Subject and Servant,

British Museum,
April 23, 1766.

CHARLES MORTON.

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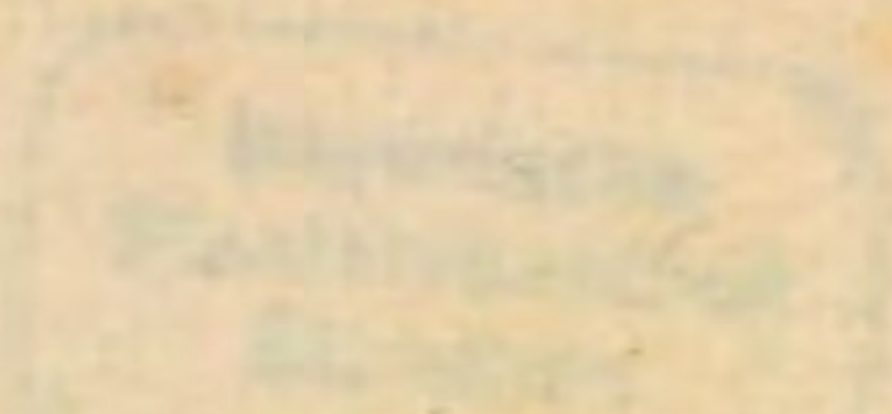
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CHARLES MORTON.



CONTENTS of VOLUME I.

The editor's preface.

The author's dedication to king Charles II.

CAP. I. THE writ, 13 Car. II. in latin and english,	PAGE	I
— II. Charles the second,		4
— III. By the grace of God,		8
— IV. Of England, Scotland,		12
— V. France, and Ireland,		18
— VI. King;		25
— VII. Defender of the faith, &c;		49
— VIII. To the sheriffe		54
— IX. Of Bucks,		63
— X. Greeting.		70
— XI. Whereas by advice,		75
— XII. And assent,		84
— XIII. Of our		87
— XIV. Council;		89
— XV. For some great, and weighty affairs,		102
— XVI. Concerning us;		108
— XVII. The state,		115
— XVIII. And defence,		124
— XIX. Of our kingdom of England;		132
— XX. And, of the church of England:		137
— XXI. We have ordained		166
— XXII. Our parliament		172
— XXIII. To be holden,		199
— XXIV. At our city		211
— XXV. Of Westminster,		214
— XXVI. On the eight day		217
— XXVII. Of May		225
— XXVIII. Next ensuing;		231
		XXIX.

CONTENTS of VOLUME I.

CAP. XXIX. And there to have conference,	PAGE 234
— XXX. And treaty,	237
— XXXI. With the great men,	239
— XXXII. And nobles,	270
— XXXIII. Of our said kingdome.	315
— XXXIV. We command you,	329
— XXXV. Firmly injoyning,	333
— XXXVI. That proclamation being made	336
— XXXVII. In your next county court,	340
— XXXVIII. To be held after receipt	354
— XXXIX. Of this our writ,	356
— XL. Of the day, and place aforesaid;	361
— XLI. You cause to be elected	366
— XLII. Freely, and indifferently,	383
— XLIII. By those who shall be present	390
— XLIV. At such proclamation;	395
— XLV. (According to the forme	397
— XLVI. Of the statutes thereof	399
— XLVII. Made, and provided;)	406
— XLVIII. Two knights	433
— XLIX. Girt with swords,	440
— L. Most fitt;	459
— LI. And discreet men,	475
— LII. Of the said countey;	487
— LIII. And of every cittie	489
— LIV. Of that countey,	492
— LV. Two cittizens;	495
— LVI. And of every borough,	497
— LVII. Two burgesse;	500
— LVIII. Of the discreeter,	503
— LIX. And more sufficient men;	514
	CHAP.

T H E
E D I T O R ' S P R E F A C E .

I BEG leave to premise, by way of introduction, certain particulars; which relate to the following book, and to the author thereof.

And 1st. concerning the book; which is printed from a fair manuscript, in six volumes octavo, now deposited in the british museum. This manuscript was put into the hands of the editor to be printed, and then presented to the british museum for the inspection of the public, by the owner the late Thomas Carew, of Crocombe in the county of Somerset, esq; member in the ninth parliament of Great Britain, for the borough of Minehead in the same county. This favour was obtained by the goodness, and at the instance, of the right honourable Sir John Cusht, bart. the present speaker of the honourable house of commons; the right honourable Arthur Onslow, esq; the late speaker; and the honourable Sir Richard Adams, knight, one of the barons of his Majesty's court of exchequer; to whom, therefore, the publick is indebted for the useful present that is now made to it. I understand, that Mr. Carew bought this manuscript at the sale of the library of the late duke of Chandos, in the year 1747^a. But how it came into

^a On March 26, being the 13th night's sale of that library. MS. N^o 1849. as appears from the auctioneer's catalogue, p. 77.

his grace's possession does not appear. It was supposed to have been in the hands of the first earl of Clarendon: but this is doubtful; as I have been assured, that the dispersion of the library of that noble lord did not take place 'till about ten years ago. Be this as it may; there is no doubt that the whole manuscript is the hand writing of the author. And this appears by official signatures of his name, in my possession; with which I was favoured by Edmund Waller, of Beconsfield, esq; out of the papers of his celebrated ancestor, the contemporary of our author: and it appears yet more undeniably from an entire letter in Sir Bulstrode Whitelocke's hand writing, dated June 9, 1646; which is now extant in the sloanian collection of manuscripts^b.

From the circumstance aforesaid, and from the condition of the manuscript, which is rather elegant, bound in turkey leather with gilt leaves; I am inclined to think that this is the very original presented, or designed to be presented, to king Charles the 2d: "not exposed to others view, (in the words of the author,) but "gathered purposely, and tendered most humbly to (his) majesty; "not in a presumption of any thing worthy (his) acceptance, but "in a gratefull sense of (his) goodness to (the author,) who desires to own it with his own conviction, and endeavour to convince others^c."

It is very clear, that the present publication can have no weight, but as it is conformable to the original: and this made it of considerable consequence to preserve the original entire. To this end, a copy was carefully taken for the use of the press; wherein the spelling of the author's manuscript was preserved throughout; except where it seemed to obstruct the sense by some equivocation, as

^b See Sloan. MS. N^o 1519. article 65. british museum.
 thor's dedication to king Charles 2.,

^c See the au-

in the words "whither," and "then," for "whether," and "than," and a very few others. In the printing, the several proofs have been carefully collated with the original: and it has been attempted to render the text, which often runs out into very long periods, more intelligible by pointing; which yet, perhaps, is not so perfect as it ought to be. The notes also have been fitted, by literal references, to those parts of the text to which they seemed to belong; which was omitted in the author's manuscript: and any mistakes, in this particular, must be imputed to the editor. When a difficulty hath appeared, either in the notes or text, the authorities have been inquired into, and consulted; and sometimes a word, which seemed to be wanting, is inserted [between brackets] in the text: small occasional illustrations have also been added in the notes, which are distinguished by the letter (M). But though considerable pains have been taken; as will appear to those who shall please to consult the author's manuscript: yet, amongst so great a number of quotations, and in such variety of languages, some faults will, probably, yet remain; for which the reader's indulgence is requested.

With relation to the sources, from whence the materials of the following sheets are drawn; they are, principally, the works of our author's learned friend Mr. Selden, which he seems to have transferred wholly into his common-place; and uses with the same freedom, as if they were his own. Not but that very frequent recourse is had to many other authors; amongst whom the names of Mr. Lambard, lord chief justice Coke, Sir Roger Owen, and Sir Henry Spelman, are very conspicuous. Our author appears also, to have thoroughly searched the rolls and journals of parliament, the patent and close rolls, with other records; and also the royal and cotton libraries, of the former of which he condescended to be the

a 2

keeper.

keeper. Upon the whole, I apprehend, the publick will have great obligations to our author, for rendering intelligible to the generality of readers that mass of useful knowledge, which lies hidden from them under very forbidding appearances.

It is probable that the treatise, thus presented to the world, is the manuscript mentioned by Mr. Penn, (in his preface to the "memorials of english affairs" printed in 1709,) and entitled "Of the power and practice of parliaments." The author's title, prefixed to the manuscript, is "Whitelocke's notes upon the king's writt for choosung members of parliament, 13 Car. 2." with this motto, "In the multitude of counsellors there is safety." But it being the opinion of some respectable persons, that this very modest title would be an injustice not only to the author's memory, but to the publick; by presenting them with a book under a title not very interesting, and perhaps, not generally to be understood: the title which it now bears has been prefixed; and will, it is hoped, be accepted by the candid reader for the following reasons.

The author in his dedication to king Charles II. declares, that "the subject of this book is that government wherof the king is the head; and therein concerned more than any others." That the particulars insisted upon are 1. "To vindicate that government from calumnies, and scandalous invectives cast upon it by ignorance, and malice." 2. "To shew it's dependance upon the sacred polity." 3. "To set forth the unparalleled justice, and equality therof." 4. "To shew the approbation, and continuance of it, under so many conquests, changes, and ages as have passed under his majesty's royal ancestors." And 5. "To note some resemblances in other governments." From this declaration

of the subject of the book, in the words of the author; I hope I shall be understood to have, in a fort, his own warrant for the title it now bears. And as the design of our author, throughout the whole work, seems to be to vindicate the antient constitutional government of these kingdoms, against two very opposite parties; it may be material to give a brief account of the said parties, and of the arguments which he employs against them.

Those who are acquainted with the history of the last century cannot be ignorant of certain unhappy disputes, which were delivered down from the preceding century; and did agitate, and divide, these kingdoms. These disputes were first about matters, which might be supposed to have nothing to do with civil government. How they began may be gathered from the life, and preface tracts, which accompany the works of the learned Mr. Hooker^e: and how the civil powers became, afterwards, engaged therein, has been further traced by many excellent pens. Three parties seem to be distinguishable, very early; viz. 1. Such as held, and explained in the most rigorous sense, certain doctrinal points adopted by the first reformers; and used by them, not without success, against the church of Rome. And it being rather difficult to separate between doctrine, and discipline; the desire of reformation, which began here in the former, was extended to the latter; and the whole form of church discipline, which had been brought from Geneva to Scotland, was held to be essential to the reformation in England. Opposite to these, and very considerable for their learning, rank and power, were such as agreed in the main with the doctrinal points adopted by the first reformers; but differed in some circumstances attending them. The persuasions, for instance, and sensibility of a state of grace, were common both to the former, and to

^e See edit. 1676, &c.

the latter : but the irresistibility, and predestination thereto, were peculiar to the former ; the latter seeming to come nearer particular decisions of the council of Trent, in a denial of these circumstances, and in the doctrine of merit. The latter adhered also to the established form of ecclesiastical discipline ; and had the sanction of the royal civil power.

It would be hard to deny, that very many of these two opposite parties were well intentioned persons, and sincere in their notions. And that sincerity makes it the more to be lamented, that they could ever be induced to depart from the constitutional royalty of these kingdoms ; and to think that the very being of religion, and civil government, depended upon the establishment of one of the two extremes ; viz. either a tumultuous democracy, or a despotic monarchy. What men gradually associated themselves to these two parties, and with what views and purposes, is not necessary to be now said. But as the differences began upon religious points ; so the respective claims were grafted upon a divine right : and were managed chiefly, in the way of controversy, by scriptural arguments.

The third party that is distinguishable seems, when it acted, to have acceded occasionally to both the former ; being a sort of middle party, of a more temperate kind, acquainted with the history, laws, and antiquities of the kingdom ; and not entire strangers to matters of religion. These hearkened to the respective claims, with a subordination to their own notions of the legal constitution. And though the temper they observed may have intitled them to some respect ; yet it did not make them beloved, by either of the two former parties.

The author of the following sheets seems to have adhered conscientiously, and steadily, to this temperate party; and to have been more uniform in his behaviour, than perhaps any other person whose character has come to our knowledge. If we view him in his private memoirs; we never find him giving any countenance to schemes of violence. He is always declaring what he conceives to be the laws, and constitution of the kingdom; and asserting the impossibility of preserving those laws, if the form of government were to be altered: to which he bore a manly testimony upon divers memorable occasions. And as he did not want opportunities, either in the time of Oliver Cromwell or afterwards, particularly in the year preceding the restoration, to have secured wealth and greatness to himself, if he would have given up his principles: so he must be absolved from the imputation, laid upon him by Mr. Wood, of being observant only of his own interest. That he gained nothing by his publick connections, he solemnly declares in the following work: and that he was not utterly ruined at the restoration, was owing to the mercy and goodness of the king¹; upon conviction of his integrity, and temperate behaviour.

It is not for me to decide concerning the respective merits, or demerits, of these three great sets of men. What happened is but too well known. The form of government in church, and state, was dissolved; and the reigning king lost his life, in the face of the world. New establishments, of various kinds, were sought; but could not be found, or at least fixed, amongst the discordant personal interests that intervened. Under this fluctuation of affairs, after the death of Oliver Cromwell and the removal of his son Richard, king Charles 2. was invited to England. And the convention parliament having met, in April, 1660; the lords declared, on the 1st of May following: that “according to the antient, and

¹ See the author's dedication.

“ fundamental laws of this kingdom, the government is, and ought to be, by king, lords, and commons ^s. ”

In the year preceding the restoration, we find that our author, together with major Wildman, had been “ employed in considering “ of a form of government of a free state ; wherein they two, and “ none else, had gone far ^h. ” It is not improbable, that the five articles in major Wildman’s declaration, anno 1654, represent the outlines of their plan ⁱ ; and that the present treatise contains part of their materials : and perhaps more of them are in another manuscript mentioned by Mr. Penn, entitled, “ a treatise upon the power “ of princes, especially in ecclesiastical affairs. ” Our author’s speeches upon divers publick occasions are printed ; and a great part of the matter of them is plainly interwoven in the following work. Wherein, under the form of notes upon the several sentences of the king’s writ for choosing members of parliament, he has debated the whole question, concerning the constitutional government of England ; agreeably to the foregoing declaration of the house of lords. The time, when he began the present treatise, seems to have been soon after king Charles II’s return to England, and issuing the writ of summons : for in p. 44. vol. ii. he mentions, that the bishops were not then restored to the house of lords ⁱⁱ ; which was effected in the 13th of Car. 2. ^k And it must have employed him several years ; as we find him cite an act of parliament in the 16th of Car. 2. ^l

From the preceding account of the controversies in these nations, and of the actors in those controversies ; the reader will neither be surprised, nor offended, at the frequent use that is made in the following sheets, of scriptural arguments ; they being almost the only ones,

^s Whitelocke’s memorials, edit. 1732. p. 700.

^h Memorials, p. 692.

ⁱ See memorials, p. 618—620.

ⁱⁱ The expression is ; “ the bishops being at

present, not of the lords house.”

^k 13 Car. 2. stat. 1. cap. 2.

^l See p. 167. vol. 1.

(as was hinted before,) that would weigh with the conscientious, amongst the opposite parties, whom our author was desirous to convince : and it is manifestly for the sake of these persons, that he doth so often shew the resemblance of the english government to that of the Jews ; wherein he always treads in the steps of the learned Mr. Selden. At the same time it must be confessed, and later days have proved, that any connection between the religious, and political notions of the two extreme parties, was entirely accidental. For as on the one hand, the episcopal clergy have made very memorable stands, both before and since the reformation, in favour of magna carta, and the liberty of the subject ; whilst in their turn the presbyterian, and independent clergy, have been found not unsusceptible of the highest notions of personal power : so also instances are not wanting of the two extremes, viz. democracy, and absolute monarchy, having been asserted, without a visible reference to any religious principles whatsoever.

I have the pleasure to assure any readers of this class, that they will find themselves not neglected in the following sheets. For it may be supposed to be for their sakes, that our author has also launched forth into the wide ocean of general argument. Ingenious readers will here find the stores of the antient, and modern world, ransacked for their entertainment ; philology, history, law, politics, and a consummate experience of affairs, displayed before them : and it will be hard if those, who seek it, do not find improvement ; which is the invariable point of our author. If ever he seems to trifle ; for instance, when he condescends to amuse himself with etymologies, according to the fashion of the times : it is to introduce some useful admonition, which is thereby rendered the more striking. But such passages may be left to the observation of the reader.

Having thus authenticated the present book ; and given reasons for the title it now bears, by a brief exposition of the subject : I will proceed to some more general observations.

It appears, from the foregoing particulars, that civil polity is the subject of the present work ; and that the branch of that science herein more particularly discussed, is that mixed distribution of civil power, which the author conceives to be the constitution of these kingdoms. His manner of treating this subject is popular, for general reading. But it is a great advantage to have a constant eye to the principles, and order of science ; and any thing of demonstrative argument can only arise from a reference to them, either expressed, or implied. The ancients, who are supposed to be the best masters of science, have been very accurate in this of politics ; as far as their knowledge of the origination of mankind would suffer them to go. They used the word politics in a much larger sense than it is now understood, for the whole science of practice^m, or action amongst men ; as opposed to speculationⁿ : comprehending therein the three great rules of acting, whether as man simply ; or as man, connected in a family ; or as man, member of a civil state^o. These three rules or lines are so connected in the order of principling, and generation, that they seem to form one great circle ; in the circumference of which three points may be distinguished. The first is the doctrine of morals in an individual, ethics proper, being the point from whence the motion begins ; delineating the due happiness of man, with the true means to that happiness. The second is the doctrine of a house, œconomics ; tracing further the due happiness of a family, with the true means to that happiness. The third is the doctrine of a civil society, politics proper ; marking finally the due happiness of a vicinity of families united in an orderly consti-

^m πρακτικὴ. ⁿ θεωρητικὴ. ^o Aristot. Ethic. Nichomach. l. i. c. 2. & l. 10. c. ult. also, Magn. Moral. l. i. c. 1.

tution, and equitable administration of civil government, as the true means to that happiness. The perpetuity of rational happiness is the perfection of it: and therefore, whatsoever the form of civil government may be, or the order of command and subjection established as means to the end; it seems to be common to every form, that a sufficient care be taken of the education of all the children of the society, in those essentials which belong to them as rational creatures. Which last part of the true means of political happiness may be said to complete the circle; for it terminates in the point from whence the motion began, the due happiness of the individual.

The idea of happiness, (stated by the philosopher^p,) is a comprehension or completion^a of the three kinds of good; viz. that of the mind, which he calls the first in power and influence; 2. those of the body, which are health, strength, beauty and other concomitants; and 3. externals, which are wealth, kindred, estimation and the like. But this idea of human happiness, great as it is, receives a high and infinite improvement from the christian plan.

I suppose therefore, that it would be no advantage to the science of politics, if there were any who sought to separate it from morality; or who should be pleased to deny, that the same line of equity, or justice, runs through the whole. For a family; though it consist of various human individuals, in an order of command and subjection, is but one family; and a civil government, though it consist of various families, in an order of command and subjection, is but one civil government. And a civil government hath even more of unity than a family can have; because the differences of it's members are less essential, or less founded in na-

^p See Diogen. Laert. p. 121. edit. Lond. 1664.

^a συμπλήρωμα.

ture: being very much accidental, from what is called fortune; and not reaching necessarily to the understanding, and powers of individuals. A civil government is also more equitable than that of a family, as it is freed from divers frailties which operate with less reserve, and are too apt to disorder the rule of the domestick. In this notion of the uniformity, and universality of justice and equity, we may go yet higher; and affirm, that the *jus gentium*, between nation and nation, is the very same with that between man and man: with this additional advantage, that it may be supposed to be yet more perfect; as it is more free from personal frailty; and from other differences whether natural, or accidental, in the aggregated units. And it is to be noted, that the operation of this equity is as universal as the thing itself: for any obstruction, or denial of it, is permanently impulsive to evil; and on the other hand, any forwarding, and affirmation of it, is permanently impulsive to good.

It hath been a great question amongst speculative politicians, (to use the word in it's ordinary sense,) what mode or distribution of civil power is the best; i. e. the most conducive to the ends of civil society, which are the good of the whole. The modes which have been experienced in the great theatre of the world are either pure, or mixed. The pure distributions are three, viz. a monarchy, or an aristocracy, or a democracy: the mixed distributions are a compound of any two of the former; or, of all three. Instances of each of these occur in the histories of antient Greece, and Rome; with the defects to which they are respectively liable, and the fatal wounds which those defects have ultimately given to each sort of government. It may however be proper to observe, that we have the testimony of Photius (who lived in the 9th century,) that the antients never arrived at the perfect comprehension, or mixed distribution,

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tribution, of civil power. For that learned author says, that there
 “ was read to him a dialogue concerning the art or science of poli-
 “ tics, in which the speakers are Menas, a senator, and Thomas,
 “ a chancellor. This dialogue is divided into six conversations,
 “ wherein is introduced a form of government different from those
 “ described by the antients; which new form is called the govern-
 “ ment or rule of justice, a dikæarchy: and the dialogue finds
 “ fault, justly enough, with the republick of Plato. It is fur-
 “ ther declared, that the form of government here introduced
 “ ought to be composed of the three pure forms; viz. the
 “ royal, the aristocratic, and the democratic: selecting from
 “ each form what is perfect therein; and thus finishing, and com-
 “ pleting that civil government, which is truly the best.” Hitherto
 the learned patriarch¹.

There is a passage in king Charles the first's “ declaration, and answer to the nineteen propositions,” which has a very striking resemblance to this of Photius; and is an interesting exemplification of it. Of this the reader may judge, who will be pleased to compare the said passage, as quoted in the 93 chapter of the following work², with the text of Photius.

It is, therefore, the happiness of our present age and nation, to be in the actual possession of that best form of civil government, after which other politicians have so much inquired. Those who

¹ Ἀνεγνώσθη περὶ πολιτικῆς, ὡς ἐν διαλογῷ Μηνᾶν πατρίκιον, καὶ Θωμᾶν ραιφερενδάριον, τὰ διαλεγόμενα εἰσάγων πρόσωπα. Περιέχει δὲ ἡ πραγματεία λόγους ἕξ, ἐν οἷς καὶ ἕτερον εἶδος πολιτείας παρὰ τὰ τοῖς παλαιοῖς εἰρημένα εἰσάγει, ὃ καὶ καλεῖ δικαιοκρατικόν· ἐπιμέμφεται δὲ τῆς Πλάτωνος δικαίως πολιτείας. “Ὡς δ’ αὐτοὶ πολιτείας εἰσάγουσιν, ἐκ τῶν τριῶν εἰδῶν τῆς πολιτείας, δεόν αὐτὴν συγκεῖσθαι φασί, βασιλικῇ καὶ αριστοκρατικῇ καὶ δημοκρατικῇ· τὸ εἰλικρινὲς αὐτῇ ἐκάστης πολιτείας συνεισαγωγῆς, κακείνην τὴν ὡς ἀληθῶς ἀρίστην πολιτείαν ἀποτελούσης. Photii Bibliotheca, n. 337. p. 23. edit. Andr. Schotti, 1611.

² Vol. 2. p. 308.

have looked into the laws, and history of England, must have had very interesting sensations when they have observed the various fluctuations of civil power amongst us; 'till the last solemn recognition, and establishment thereof at the revolution, in the year 1688. And such readers as take a pleasure in noting the operations of providence, in their order of causing, cannot fail to remark the share which our author, and some writers his contemporaries particularly the reverend Mr. George Lawson^t, seem to have had in that memorable event, which is the golden epoch of british happiness; and the true date of the race of our constitutional kings who are, in truth and fact, the greatest kings in the universe. By this event, the subjects of real, and of personal greatness^u, were severally declared: and each had their respective properties assigned to them. In brief, the great boundary between constitution, and administration, was solemnly recognized, and established. For all which I beg leave to refer to the convention act, and subsequent act of settlement, as the rule to which every thing our author, or any other hitherto hath said, must be brought; and by which, it must be measured. The salutariness of the accession to this great event, in the union of Scotland which former times had deemed impossible, is undeniable: and any further union, for the good of the whole, may be safely trusted to the great wisdom that presides in these kingdoms.

It remains 2dly, that something more particular be said of the person, and family, of the author of the following sheets.

Mr. Anthony Wood has collected the principal facts of Sir Bulstrode Whitelocke's life^w: and perhaps they would not have suffered greatly, if they had not been accompanied with some im-

^t *Politica sacra, & civilis*; 4^{to} London, 1660; & 8^{vo} 1689.

^u See Lawson, where above, p. 54—57. edit. 1689.

^w *Athenæ Oxonienses*, vol. 2. p. 545—548. edit. 1721.

proper reflections. Sir Bulstrode himself has furnished many other valuable materials, in his memorials of his own times. We find in the book entitled "the lives of the lord chancellors of England^x," a very instructive life of our author, formed from the preceding sources; which fills almost the whole second volume of that work, as the first volume is taken up chiefly by that of lord Clarendon; between whom as contemporaries, and distinguished actors in opposite parties, a parallel is drawn at the end of the second volume. From these three works, the lives in the biographical dictionaries seem to have been extracted; and that in the last volume of the *Biographia britannica*^y is very circumstantial. Such as have the opportunity of perusing all the said books will have great pleasure. And for the sake of others who have not the leisure that is necessary, I beg leave to subjoin the greatest part of the text of the last: omitting the notes, as I would not prejudice that useful work; and leaving the facts to speak for themselves.

Our author, Sir BULSTRODE WHITELOCKE, or Lord Commissioner Whitelocke as he is sometimes called, (an eminent lawyer in the last century,) was the son of Sir James Whitelocke, knight, one of the justices of the king's-bench; by Elizabeth his wife, daughter of Edward Bulstrode, of Hugely or Hedgley Bulstrode, in the county of Buckingham, esq; He was born August 6, 1605, in Fleet-street, London, in the house of Sir George Croke his mother's uncle, afterwards one of the justices of the common-pleas; and was educated, in grammar learning, in Merchant-taylors school. When he had properly improved himself there, he was admitted, in michaelmas term 1620, a gentleman commoner of St. John's college, in Oxford: at which time he was principally recommended to the care, and oversight, of his father's contemporary and inti-

^x 2 vols. 8^{vo}. printed, London 1708.

^y Folio, London, 1766.

mate friend Dr. Laud, then president of that house; who shewed him many kindneſſes. In return for which many years after, when Dr. Laud, then archbiſhop of Canterbury, was to be brought to his tryal; Mr. Whitelocke refused to be in the number of the committee appointed by parliament to draw up a charge againſt him. Having laid a good foundation of general learning, he quitted the univerſity without taking a degree; and went to the middle temple where, by the help of his father, he became a great proficient in the common law: not neglecting, at the ſame time, every other branch of polite, and uſeful literature. In the miſt of his more ſerious ſtudies he ſhewed a gallant turn of mind; by being one of the chief managers of the royal maſque which was exhibited by the inns of court, in February 1633, before king Charles I. and his queen, and their court, at Whitehall. To him in particular was committed the whole care and charge of the muſic for this great maſque; which was ſo well performed, that it excelled any muſic that had before that time been heard in England.

Being a counſellor at law, he delivered with great applauſe, though unprepared, a charge at the quarter-ſeſſions at Oxford in 1635: and was often conſulted by John Hampden eſq; when he came to be proſecuted for refuſing the payment of ſhip-money. At the beginning of the commotions in Scotland, he wanted not ſolicitations on behalf of the covenanters: but he perſuaded his friends not to foment thoſe growing public differences; nor to be any means of encouraging a foreign nation, againſt their natural prince; from whence he feared great, and evil conſequences. He was choſen one of the burgeſſes for Marlow, in the long parliament which met November 3, 1640. Towards the beginning of the ſeſſion, a debate ariſing about the writs of Habeas corpus upon which Mr. Selden, and other members, (who had been committed for

for their freedom of speech in the parliament of 1628,) had demanded to be bailed, but were refused: this was so far aggravated by some, that they moved Mr. Selden, and the rest, might have reparation out of the estates of those judges who then sat in the king's bench. And they being named to be Hyde, Jones, and Whitelocke; our young member stood up in defence of his father, and vindicated him from the fact alledged. When the earl of Strafford came to be impeached, by the commons, of high treason; Mr. Whitelocke was chosen chairman of the committee appointed to draw up articles, and manage the evidence against him. All the papers relating thereto were delivered into his custody; but a very material one was conveyed away by the lord Digby, to the earl, which brought a suspicion of treachery upon Mr. Whitelocke: tho' he was sufficiently cleared afterwards, when a copy of that paper was found, in lord Digby's hand writing, in the king's cabinet at the battle of Naseby.

In 1641, during the debates about the militia, he made an excellent speech; wherein he declared it as his opinion, that the power of the militia was neither in the king alone, nor in the parliament; but jointly, in both. All accommodations about that important matter being found impracticable; which Mr. Whitelocke appears to have earnestly wished for; and he, being apprehensive of the ensuing miseries and troubles, spoke against raising an army for the defence of the parliament, and sensibly described the calamities of a civil war. However being perhaps unwilling to see, what he thought, the most valuable rights of the nation tamely lost; he accepted of the office of deputy lieutenant of the counties of Bucks, and Oxford, in 1642; and, together with Mr. Hamden, dispersed the commissioners of array at Watlington. Also, having a gallant company of horse of his neighbours under his command, he

marched to Oxford, of which he was named a fit person to be governor; and proposed the securing of that important place: but his advice was not followed. About the end of October, his seat at Fawley-Court was rifled and plundered, by a party of prince Rupert's brigade; which, as he says, he remembered only to raise a constant hatred of any thing that may, in the least, tend to foment such unhappiness, and misery: and in November, he appeared among those forces that opposed the king, at Brentford. In January 1642-3, he was one of the commissioners at the treaty of peace at Oxford, wherein a good deal of the business lay upon him; and he had a great share of favour, and respect, from his fellow commissioners. Upon all overtures of peace, he industriously laboured to promote them; which might be some ground of his being so often employed by the parliament, in their treaties. In March, the lords having proposed, that a new committee should be named, to consider of propositions of peace; and the commons insisting to have that matter referred to a committee of both kingdoms: Mr. Whitelocke observed, that in the debate some were averse to any proposition at all for peace; which induced him to make an excellent peaceful speech.

He was a member of the assembly of divines: and in their debates for settling the government of the church, delivered his opinion against the divine right of presbytery: which notion he afterwards opposed in the house of commons, and prevented them from being surprized upon this great question; for which he received thanks. In 1644, he was constituted lieutenant-governor of Windsor castle. Both houses of parliament having, at length, agreed upon the propositions for peace; Mr. Whitelocke was appointed one of the committee to carry them to the king, at Oxford. His majesty seemed to express a particular regard for him; styling him and Mr. Holles, messengers of, and wishers to, peace. And when they were about
coming

coming away, the king desired them to set down, in writing, what they apprehended might be fit for him, to return, in answer to their message; and was in their judgements likely to facilitate the good work of peace. Accordingly, going into a private room, he wrote down, not in his usual hand, what he and Mr. Holles judged to be fit for the substance of his majesty's answer, to the proposals of peace they had brought; and left it upon the table of his withdrawing room.

But this affair had like to have proved their ruin. For it coming to the knowledge of the lord Saville, who was then with the king at Oxford, and revolted afterwards to the parliament; that inconstant lord sent to the commons an accusation of high treason against Mr. Holles, and Mr. Whitelocke, on account of that paper, the second of July 1645. They were persecuted with all eagerness; and defended themselves with so much constancy, mutual fidelity, and convincing evidence; that after a long, and strict examination, they were clearly acquitted by a vote of the house, on 21st July, of any misdemeanor in this business; and left at liberty to prosecute if they pleased, for damages, the lord Saville then a prisoner in the Tower.

To return to some particulars that happened in the mean time.

The scottish commissioners finding that Oliver Cromwell, by some words he had dropped, was no friend to their nation, nor the government of their church; and the lord general Essex growing jealous, that he was endeavouring to supplant him: a private consultation was had, whether he could not be proceeded against as an incendiary. Mr. Whitelocke, who was present, declared it as his opinion that he could not. Mr. A. Wood says, that he gave Oliver
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timely notice of the design ; and thenceforth became very gracious with that most active person. But he says himself ; that at this debate, some who were present were false brethren, and informed Cromwell of all that passed among them. He was not for the self-denying ordinance, and made a speech against it. In the beginning of the year 1645, he was appointed one of the commissioners at the treaty of Uxbridge, and attended there. And on the 6th of August following, when the house of commons was in debate about sending propositions of peace to his majesty ; he furthered them, as much as he could. He had been, the last year, nominated attorney of the duchy of Lancaster. On the 15th April 1645, he was made one of the commissioners of the admiralty : and December 16th, steward of the revenues of Westminster college. When the presbyterians were striving to have the power of excommunication, and suspension from the sacrament, vested in themselves ; he opposed it in the house of commons : for which they censured, and termed him a disciple of Selden, and an erastian.

Upon several occasions, he shewed himself a lover of learning. As for instance, in order to preserve the lord keeper Lyttleton's books, and manuscripts, from being sold and dispersed by the sequestrators, as they would have been ; he procured an order from the house of commons, that such as could be discovered should be bestowed upon him : and by that means he saved them, to have the present use of them ; resolving whenever there was an happy accommodation, to restore them to the owner, or to some of his family. Neither was he less useful in preserving the Herald's office ; being one of the committee, and very active in promoting the ordinance, for settling and regulating that office ; though great opposition was made by the lower levelling class of the then ruling powers, who were but of yesterday. He caused also the manuscripts,

scripts, and books at Whitehall, (because of the soldiers being there) to be removed to St. James's house; that those rare monuments of learning, and antiquity, might be preserved.

At the siege of Oxford, (where he occasionally attended general Fairfax, and was admitted to his councils of war;) being a friend to the university wherein he had been educated, and undeniably a man of considerable learning: he used all his interest to have honourable terms granted to the besieged garrison; and that the colleges, and libraries should not be hurt, or plundered. In October 1645, he appears to have resorted with Sir Henry Vane, and "other grandees of that party; and was kindly treated by them, as he used to be by the other;" to use his own words. In June 29, 1646, he was one of the select council ordered, by general Fairfax, to consult about several sieges; and was made use of as their secretary: and he kept a strong garrison in his seat of Phyllis-Court, for the use of the then prevailing powers. In December 1646, we find him earnestly promoting the ordinances, for taking away all coercive power of committees; and all arbitrary power from both, or either of the houses of parliament, or any of their committees, in any matter between party and party: judging that to be for the honour of the parliament; and the ease, and right of the people. And being well skilled in foreign affairs, he was usually in every committee relating to them. At the same time he applied himself closely to his practice of the law; and attended the assizes, much to his profit, as may be seen in his memorials.

When his old friends Sir Philip Stapleton, Denzil Holles Esq; recorder Glyn, and others came to promote eagerly the disbanding of the greatest part of the army; he declared against that measure: believing, as he said and, very likely, knew, that the army would
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not submit to it; and ill consequences might follow. This highly ingratiated him with "Cromwell, and that party; who entertained "him with all respect and affection, and highly courted him." His friends in the house of commons, and some others who would have been rid of him, moved that he might be sent lord justice into Ireland, to exercise the civil government; but he was not free to undertake that charge. And now Cromwell, and his adherents, were against his going away, and more than formerly desired his company; and began to use his advice in many things. In September 1647, the city of London were very desirous of having him for their recorder; which he declined. And December 5, the speaker of the house of commons not being well, and our author being informed by his friends, that in case the speaker should continue ill, they would call him to the chair to supply that place; to avoid it, he withdrew himself from the house, and went home.

In March 1647-8, he was appointed one of the three commissioners of the great seal; for one whole year. These commissioners were said to be agreed upon before-hand, by a private junto of Cromwell's party. He was sworn into his office April 12th, with a salary of 1000 pounds a year; and took much contentment in the privacy, and credit of it. On the 17th, he resigned his place of attorney of the duchy of Lancaster. He gives us a remarkable instance of his own, and fellow commissioners, most laudable and exemplary dispatch in the chancery business: that in the morning of one day they determined thirteen causes, and forty demurrers in the afternoon; and sometimes sat from five o'clock in the morning, till five in the evening. According to his own account, he was no gainer by accepting of the place of commissioner of the great seal: for the profit of it was not above 1500l. a year; whereas his practice, in the law, brought him before near 2000l. per annum.

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He thought himself but unfixed, and unfettled in that high post; looking upon the self-denying ordinance, debated in parliament 6 August 1648, as a design to remove him. And such a design appears in October following, when he was ordered by the house to be one of the serjeants at law then called, and attorney-general of the duchy: though in words, the house did express much favour, and respect to him; and their compliments were too high for him to remember.

The army's force upon the house of commons drew some serious reflections from him. And he had no great mind to sit in that house, as it was then constituted. He was one of the committee of thirty-eight, named to consider of drawing up a charge against king Charles I. but he never attended; being resolved to avoid meddling in that bad affair: and therefore he went into the country, on purpose to be out of the way, and not be liable to be overpersuaded or compelled. But, before that, he had assisted at a meeting of some of the members of the house of commons, to consult about settling the kingdom by parliament; and not to leave all to the sword. He returned to London, January 9th 1648-9, after the king's trial was begun; though he seemed not to be concerned in it: and refused, afterwards, to approve the proceedings of the high court of justice. But he had meetings and free discourses with Cromwell, about the then affairs, and actions of the army; and the settlement of the kingdom.

February 1, he declared, in the house of commons, his disapprobation of the vote of December 5, 1648, "that his majesty's concessions to the propositions of the parliament, were sufficient grounds for settling the peace of the kingdom." And on the 6th "it was put upon him to draw an act to take away the house of lords:.

lords : wherein he desired to have been excused, in regard he was not in the house when the vote passed, and had declared his opinion against it ; but could not get excused."

February 8, he made a speech, extant in his memorials, to excuse himself from being made one of the new lords commissioners of the great seal : but notwithstanding this, he was voted to be one, nemine contradicente. He says, that ' being beforehand acquainted that he ' was to be named ; he had often advised with his friends about ' it : and that the most considerable particulars,' (which seem to have been urged by his friends,) were ; that ' he was already very ' deeply engaged with this party ; that the business to be undertaken by him was the execution of law and justice, without ' which, men could not live one by another ; a thing of absolute ' necessity to be done.' He adds, that many objections also were made against his accepting this place ; which are mentioned in the speech. The 14th of February, 1648-9, he was nominated one of the council of state ; and March 16, (according to an order of the 14th,) " He brought in a draught, of a declaration, touching the proceedings of parliament in the late transactions : which, being committed, was made much sharper than he had drawn it ; and divers clauses were added, which he thought matters fit to be omitted." June 13, he was chosen high steward of Oxford, in the place of the earl of Berks. On the 6th of July, he voluntarily surrendered his office of attorney of the duchy, which the house had bestowed on him. On the 30th of July, at the instance of the learned Mr. Selden, he undertook the care of the royal library, and medals at St. James's, in order to prevent a design formed by some to have them sold, and transported beyond sea ; which he thought would be a dishonour and damage to this nation, and to
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all scholars here; and fearing, that in other hands they might be more subject to imbezzling: this trouble therefore he undertook, to preserve them for public use². John Dury, a German, a good scholar, and who had been a great traveller, was his deputy-librarian. September 26, he was appointed one of the governors for the school, and almshouses at Westminster: and in November following, opposed a motion made in the house of commons, that no lawyers should be of the parliament. The year following, in the debates upon the act for putting all the books of the law, and the process and proceedings in courts of justice, into the english tongue; some having spoken in derogation, and dishonour of the laws of England: the lord commissioner stood up in defence of them; and endeavoured to prove, that they were not introduced by William the 1st. September 9, 1651, he was appointed, with three other members of parliament, to go out of town to meet Oliver Cromwell on his way to London; and congratulate him, upon his victory at Worcester.

All opposition being now fallen before Cromwell, he had a meeting, December 10, at the speaker's house, with some members of parliament and officers of the army, to talk about the settlement of the nation; and probably, with a view to sound their opinions, and inclinations. Our author, who was present, delivered his sentiments to this purpose. 'The laws of England are so interwoven with the power, and practice, of monarchy; that to settle a government, without something of monarchy in it, would make so great an alteration in the proceedings of our law, that they had scarce time to rectify it; nor could they well foresee the inconveniencies that would arise thereby. Therefore he added, that there might be a day given for the king's eldest son, or for the

² Vid. note ², p. 279, vol. 2. of this book.

' duke of York his brother, to come in to the parliament: and, upon such terms as should be thought fit, and agreeable both to our civil, and spiritual liberties, a settlement might be made with them.' In November 1652, he repeated the same advice, in a private conference with Cromwell; wherein he dissuaded him from assuming the title of king; and persuaded him to enter into a private treaty with Charles II.

This proposal was very unpleasing, from the first, to Cromwell; who thence forward grew cool towards the lord commissioner, and had but little intercourse, and correspondence with him. In order to get him out of the way, and deprive him of his office of commissioner of the great seal; he was named one, and the chief, of the commissioners for the administration of the civil government in Ireland. Arguments were not wanting to urge him to accept of it; as the great command, the honour, and the considerable profit of that employment. But as he perceived the offer proceeded rather from ill, than good will; and that Cromwell was forward in it under hand, as not liking his advice abovementioned, and his noncompliance with his sovereign pleasure in some things, particularly in chancery causes: he at first discreetly excused himself from that service, which would have been no advancement either to his honour, or profit; in a country too, which he did not like. And when he was rather over pressed; he got himself off from being named, by a kind of resolute denial. But not long after, Cromwell found occasion, by an honourable employment, to send him out of the way: that he might be no obstacle, or impediment, to his ambitious designs.

When the two commonwealths of England, and Holland, began to quarrel; and the right of the fishery, and dominion of the
british

british seas, came under debate: the maintaining of those privileges was committed to our author, who better than any one was skilled in such points; and, in the history, and antiquities of this nation. He was very uneasy, and displeased, at the army's beginning to set up for themselves, without the parliament; and always, and earnestly, declared his judgment against this as the most dangerous, and most ungrateful thing that could be practised. The 20th April, 1653, he urged the same arguments, at a great meeting of parliament-men, and officers, in Cromwell's lodgings; and said, that dissolving the parliament would neither be warrantable in conscience, or wisdom. Again, when it was proposed, that a number, about forty, of parliament-men and officers of the army, should be nominated, and impowered by the parliament, for managing the affairs of the commonwealth till a new parliament should meet; and so the present one to be forthwith dissolved: he opposed this proposal, and the more, fearing lest he might be one of these forty; who he thought would be in a desperate condition, after the dissolution of the parliament. But notwithstanding his own, and his party's endeavours, the parliament was dissolved in a rude, and arbitrary manner by Oliver Cromwell. He did not proceed in the business of the great seal, till after Cromwell, and his council of officers, had set forth a declaration of the grounds and reasons, for their dissolving the late parliament; and that all civil officers should proceed as formerly in the execution of their offices. Cromwell was so much offended with him, that he did not admit him into his first parliament, which assembled in July 1653; and his great commission was superseded, by the vote for taking away the court of chancery.

To remove him yet further, the honourable employment (hinted at before) was contrived for him; as a kind of creditable exile:

that was an embassy to the famous Christina queen of Sweden, to which he was nominated by Cromwell, September 4th, 1653, and voted in parliament ten days after. He received his commission, and instruction, from the hand of the speaker, the 29th October: and having very expeditiously prepared himself, he set out from London November 2d, embarked at Gravesend the 5th, sailed the 6th, and after a difficult passage arrived at Gottenburgh the 15th. A few weeks after his departure, the parliament having resigned up their power to the general Cromwell, he assumed the supreme legislative authority, under the title of lord protector of the commonwealth of England, Scotland, and Ireland; and published his instrument of government contrived, as is supposed, principally by our author.

This great alteration at home made no alteration in his conduct; but he proceeded vigorously in the affair of his embassy, notwithstanding he met with great obstructions from queen Christina: who in his audiences, instead of hearkening to his business, entertained him with her notions of philosophy; and, with balls, and diversions. In other respects she shewed him, and his sons, great civility; and created him knight of the order of Amarantha, of which she herself was sovereign; and wore, as the badge of it, a rich jewel tied to a crimson ribband under her left breast. And on account of this knighthood it was, that we find him called Sir Bulstrode Whitelocke: which title is acknowledged by lord Sunderland, as secretary of state under queen Anne, in the privilege prefixed to the memorials of english history, printed 1709. Having overcome all difficulties; he concluded a firm alliance between England and Sweden, about the beginning of May 1654, before queen Christina's resignation of her crown. And immediately setting out upon his return home, he came to Hamburgh, June 10; embarked

at Glukstadt the 17th : and after a dangerous passage, having struck upon a sand near Yarmouth, he arrived in England the 28th.

On the 6th of July he gave the protector, and his council, a circumstantial account of his embassy : and was not only continued the first commissioner of the great seal ; but was also appointed, August 4, one of the commissioners of the exchequer. He was also recorder of Bristol. At the meeting of the protector's second parliament, August 4, (in which he was chosen for the county of Bucks, and for the boroughs of Oxford and Bedford,) he carried the purse before him : and on the 6th, gave a particular narrative to the house, of his negotiations at the court of Sweden ; for which he not only received the thanks of the house, but had also 2000l. ordered him for arrears of the expences of his embassy, and as a testimony of their favour, and a reward of his services ; the payment of which however, was not made good till February 1656-7, with the addition of 500l. He was so diligent in his attendance upon parliament ; and gained so great an interest in it ; that Oliver became highly displeased with him, among the rest. And he grew jealous of him, with many of his former friends : suspecting that their design, at bottom, was to bring in the king ; because they declared for a truly free parliament, which was indeed the way for the king's restoration. And this, says he, began now to be held fit, and requisite, by many sober and faithful patriots ; who were distasted at Cromwell's private ambition, and insolent domineering. After the dissolution of this second parliament, Cromwell and his council having framed an ordinance for the better regulating, and limiting, the jurisdiction of the high court of chancery : our author, and Sir Thomas Widdrington, made shrewd observations upon its inconveniencies ; and declared, that the observation of it was contrary to their own judgments, and consciences. Therefore, no worldly

worldly considerations could prevail upon him, to execute an ordinance which he looked upon as illegal. Accordingly, on the 6th of June 1655, he resigned the seal; for which he underwent various censures; but says, he never had cause to repent of that action. However he observes, that his fortunes and interest then decreased: and now his former pretended dear friends, and frequent visitors, withdrew themselves; and began neither to own, nor to know him. Such is the course of dirty worldlings!

But the protector, sensible of his harsh proceedings against him, for keeping to that liberty of conscience which he himself held to be every one's right, and that none ought to suffer for; by way of recompence, made him one of the commissioners of the treasury, with a salary of 1000*l.* per annum.

He also often advised with him, in his greatest affairs: and he was faithful in his advice; though sometimes less pleasing to Cromwell than the counsel of some others who, for their private ends, would flatter him, and seldom differ from him in judgment; whereof he grew at last sensible. Particularly, the protector seldom omitted to consult him about foreign affairs; wherein he thought him not unserviceable, and did much follow his counsel.

Often did Sir Bulstrode press him to have frequent parliaments; though contrary to the sentiments, and persuasions, of others. But so far was he from taking it ill, that he constituted him, on the 2d of November, one of his council of trade; and nominated him, in the beginning of the year 1656, one of the ambassadors extraordinary to Sweden. Though our author declined that employment; yet he accepted of the office of being one of the commissioners, to treat with the swedish ambassador then in England. And after long
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negotiations, of which we have a detail in his memorials; a treaty was signed, July 17, between the English and Swedes.

In the third parliament of Oliver Cromwell, which met September 17, Sir Bulstrode was elected one of the knights for the county of Bucks; and supplied the place of speaker, during Sir Thomas Widdrington's illness.

He did not choose to present, to the parliament, the humble petition and advice, &c. there being some things in it disagreeable to him: but he was chairman of the committee appointed to confer with Cromwell about it; and he advised him, among others, to take the title of king. But Cromwell durst not assume it; being awed by the commonwealth party, and the fears of a mutiny and defection from the greatest part of the army, whose threats ran very high. At his solemn inauguration at Westminster-hall, June 26, 1657; our author rode by his son Richard, in one of the boots of the state-coach, with a drawn sword in his hand. He seemed still to be much in favour with the protector, who advised with him about the besieging of Dunkirk, and other important affairs. And he persuaded the protector, to further the relief of the poor persecuted protestants in Piedmont. December 11, he received his writ of summons, as one of the lords of the other house.

When Cromwell was about dissolving the parliament, he dissuaded him from it; telling him the danger of frequent dissolution of parliaments, and what straits it would bring him into for money. But his advice was not received: nor his application successful, when he asked for the provostship of Eton college, a thing of good value, quiet and honourable, and fit for a scholar. Upon which occasion he observes, that his service was past; and therefore, no necessity

cessity of a recompence. So thinking himself neglected, and not being satisfied with the public transactions; he lived much retired. April 23, 1658, he was one of the committee for hearing appeals from Guernsey, and Jersey. And three days after, nominated one of the commissioners for the trial of Dr. Hewet, and other conspirators; but he never acted in that high court of justice, it being against his judgment, as he had before declared. He also waved the place of governor of Dunkirk, of which overtures were made to him soon after. The last instance of the protector's favour to him, was his signing, August 21st, a warrant for a patent to make him a viscount; but he did not think it convenient to accept of that honour.

The 22d January, 1658-9, Richard, the new protector, having a particular respect for him, made him one of the keepers of the great seal, without any seeking of his own: and he was one of his lords of the other house. The protector consulting him, with others, April 21st, whether it were not fit to dissolve his parliament; he, the lord commissioner, doubted the success of it: and wished they were permitted to sit a little longer, especially when they had begun to consider of raising money, whereby they would engage the army. But the general council of officers having taken a resolution to displace Richard, at that critical time our author was wary what to advise in this matter; but declared his judgment honestly, and for the protector's good, when his advice was required. After the officers had assumed the government without a single person, kingship, or house of peers; his office of commissioner of the great seal ceased: but he was named one of the council of state, May 13.

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In those distracted times, he was accused of holding a correspondence with Sir Edward Hyde, and other friends and ministers of Charles II. but he positively denied it; and desired no favour if they could prove any such thing against him; so the matter dropped. On the 5th June, he was named commissioner, with Algernon Sidney, and Sir Robert Honeywood, to go and mediate a peace between the kings of Sweden and Denmark: but disliking Sidney's haughtiness, and overruling temper, he got himself excused from that troublesome business.

Being president of the council of state, he was very active in taking measures to suppress the insurrections of Sir George Booth, and others about that time. And September 3, joined in the votes that were past for an engagement to be taken by military officers, to renounce the pretended title of Charles Stuart, and the whole line of king James; and of every other person, as a single person, pretending to the government of these nations. About this time he was promoting an union between the kingdoms of England and Scotland; for which he brought a bill into parliament the 30th of July. General Monk hearing, that the conduct of that union was left to our author; he sent him letters of high compliment, wherein he wished he might see him in Scotland. Happy would it have been for him had he accepted of that invitation; as most probably a man of his good sense would have joined the general in the king's restoration. But his ill fate kept him at home; where, October 22d, he was nominated one of the committee of ten, to consider of fit ways to carry on the affairs of the government; and the 26th of the same month, one of the twenty three members of the committee of safety, for the preservation of the peace, and management of the present government; as also for the preparing of a form of government for these nations upon the foun-

dation of a free state. This charge he says he accepted, upon the earnest sollicitation of his friends, to preserve the magistracy, ministry, and the law. November 1, the great seal was put again into his hands: and November 16, he was appointed one of the committee of nineteen, to determine the qualifications of members of parliament.

General Monk, and many of his officers, having now declared for the remains of the long parliament, against the officers of the army in England: the committee of safety issued out commissions for raising new forces; and the lord commissioner accepted of one for a regiment of horse. To counterbalance Monk's endeavours and proceedings, he and some of the principall officers represented November 8, to the lord mayor, and common council of London, that the bottom of his design was to bring in the king by a new civil war; the danger of which to the city, and nation, he represented: and advised them to provide for their own safety, and to unite for the preservation of the peace, and the safety of the whole nation. And when Lambert, deluded by Monk's pretensions of peace, stopped the march of his forces northward; our author foreseeing, that Monk only sought delays, till he could bring up his army to London, wrote to Lambert, to advance speedily with all his forces, and endeavour to attack Monk, and bring the matter to an issue before he was better provided: but his advice was not followed.

The various tumults and insurrections, almost in every part of the nation, now filled him with the utmost perplexity, and distraction. He wished himself well out of these daily hazards, and knew not how to get free of them. He much furthered the meeting of a new parliament; a proclamation for which came out the

15th of December. But being hurried with the repeated, and certain advices, that Monk's design was to bring in the king, without any terms for the parliament party; whereby all their lives and fortunes would be at the mercy of the king, and his adherents, who were sufficiently enraged: he went December 22, to Fleetwood, and proposed to him this alternative; either to order all his forces to be drawn together, and himself and his friends to appear at the head of them, and see what stand they could make; or else immediately to send some trusty person to the king, with offers of his own, and his friends services for restoring the king to his right, and that upon such terms as the king should agree upon; and he offered to go himself. But Fleetwood refusing to do it without Lambert's consent, who was at too great a distance; this proposal dropped. The next day colonel Ingoldsbys, and others, intimated to him, that his condition required he should go to the king with the great seal; which overture he did not however comply with.

The remains of the long parliament being assembled December 26, our author found that he was to expect no quarters from them; Scot, Nevil, and others having threatned to take away his life; and Scot in particular having said, that he should be hanged with the great seal about his neck for having acted in the committee of safety. Therefore he thought it safest not to appear in the house. However the speaker having, by letter, required his attendance and used also persuasions; he came to the house for about two days. But observing that many of his old acquaintance looked very cool upon him; and being informed of a design of some in the house to question him, and have him sent to the Tower: he thought fit to provide for his own safety, by retiring privately to a friend's house in the country. Before that he left order with his wife to carry the great seal to the speaker; which she did locked up in a desk,

and gave him the key. She also burnt many of his papers relating to public affairs, which the author seems to lament, as it was the occasion of his memorials being less perfect than he wished them to be.

Such was the conclusion of the lord commissioner Whitelocke's various acting on the busy scene of this world. He spent the remaining fifteen years of his life in a peaceable retirement, mostly at Chilton Park in the county of Wilts; where he died of the stone, July 28, 1675; and was buried at Fawley, near Marlow in Buckinghamshire, in an isle adjoining to the church, which he had built for a burying place for his family. It is said he waited on the king after his restoration, to beg his pardon for all he had transacted against him; and that his majesty bid him, go live quietly in the country, and take care of his wife and sixteen children. He had two wives. The first was Frances, daughter of William lord Willoughby of Parham, by his lady Frances, daughter of John earl of Rutland: she died May 16, 1649. His second wife was Rebecca, daughter of Thomas Bennet, alderman of London.

HAVING thus performed what was proposed, by way of introduction; viz. premised certain particulars which relate to the following book, and to the author thereof: I beg leave to conclude with the following fragment.

“ It seems to me, that the natural Justice, which is a duty
 “ of man, ought to be styled the parent, and nourisher, of every
 “ other virtue. And assuredly, without this habit, a man can
 “ neither moderate his desires, nor be brave, nor wise. For it is
 “ a harmony, and peace, of the whole soul; with a full concert of
 “ words, and actions. And the dominion of such a habit may be rendered more conspicuous, if we examine the other habits of virtue.
 “ For

“ For the good of these is private, respecting the individual ; but
 “ the good of natural justice respects whole systems, and through-
 “ out the universe.”

“ In the celestial system of the world, as it marshals out the
 “ universal rule of things, which are thus decreed by God ; it is
 “ providence, and harmony, and right. In a civil state, it is justly
 “ called peace, and good order. In a domestic state, it is the like
 “ mindedness of husband, and wife, towards each other ; the good
 “ will of subordinate members, towards masters ; and the care of
 “ masters, towards subordinate members. In the body, it is health,
 “ and symmetry of parts ; which are principal things, and much
 “ beloved by every living creature. In the soul, it is wisdom ;
 “ that wisdom which arises amongst men, from the knowledge of
 “ causes, and from natural justice.”

“ Since therefore, this habit doth thus instruct, and preserve, the
 “ whole and every part ; rendering them all the same, in heart, and in
 “ tongue : why may it not be saluted, by the universal voice ; THE
 “ PARENT AND NOURISHER OF EVERY OTHER VIRTUE ^a ?”

C. MORTON.

British Museum,
 April 23, 1766.

^a Δοκεῖ μοι τῶν ἀνδρῶν τὰν δικαιοσύναν, ματέρα τε καὶ τιθηναὺν τῶν ἄλλων ἀρετῶν
 προσειπεῖν· ἄτερ γε ταύτας οὔτε σῶφρονα, οὔτε ἀνδρεῖον, οὔτε φρόνιμον οἰόντε εἶναι. Ἀρμονία
 γὰρ ἔστι, καὶ εἰρήνη τὰς ὅλας ψυχᾶς, μετ' εὐρυθμίας. Δηλοφανέστερον δὲ καὶ γένοιτο τὸ
 ταύτας κράτος, ἐτάζουσιν ἀμῖν τὰς ἄλλας ἕξιας. Μερικὰν γὰρ ἔχονταί· αὐταὶ τὰν
 ὠφέλειαν, καὶ ποθ' ἔνα· ἀδὲ ποθ' ὅλα τὰ συστάματα, καὶ ἐν πλάθει.

Ἐν κόσμῳ μὲν ὦν αὐτὰ τὰν ὅλαν ἀρχὰν διασραταγοῦσα, πρόνοιά τε, καὶ ἀρμονία,
 καὶ δίκη, γένος τινὸς θεῶν οὕτω ψαφίζαμένων. Ἐν Πόλει δὲ εἰρήνη τε καὶ εὐνομία δικαίως
 κέκληται. Ἐν οἴκῳ δ' ἐστὶν ἀνδρὸς μὲν καὶ γυναικὸς ποτ' ἀλλάλως ὁμοφροσύνη· οἰκετῶν
 δὲ πόλιν δεσπόζας εὐνοία· δεσποῖαν δὲ πόλιν θεράποντας καδεμονία. Ἐν σώματι δὲ πρᾶτα
 καὶ ἅπανσιν ἀγαπαλότατα ζωοίς, ἅτε υἰγεία καὶ ἀρτιότης. Ἐν δὲ ψυχᾷ σοφία ἢ ἐκ τῆς
 ἐπιστάμης τε καὶ δικαιοσύνης γενομένη παρ' ἀνθρώποις.

Ἡ δ' αὐτὰ τὸ ὅλον καὶ τὰ μέρη, οὕτω παιδαγωγεῖ τε καὶ σώζει ὁμῶφρονα καὶ πόλιν ἀγορὰ
 ἀλλάλοις ἀπεργαζομένα· πῶς ὃ μάτηρ καὶ τιθηναὶ πασαῖν τε, καὶ πάντων, πανψαφεῖ
 λέγοιτο ; Polus Pythagoreus, Lucanus, apud Stobæum. p. 105. edit. Tiguri, 1559.

The AUTHOR'S DEDICATION

TO KING CHARLES II.

TO MY LORD THE KING.

SR.

WHEN it was in the power of your Majesty, and in the purpose of some men, to have taken my smalle fortune, liberty, and life from me; you were pleased most gratiouſly to beſtow them on me, and to reſtore me to a wife and ſixteen children who all joyne in our humble, and thankfull, owning of your mercy.

And God hath pronounced you bleſſed, and to receive mercy; for you have bin mercifull to many thouſands of your offending ſubjects. In which number I ranke myſelfe with pœnitence; and with ſtudy how to expreſſe a gratitude wherof my preſent meane, and yet troubled, condition allowes me no larger evidence than this preſent of a free will offering of the firſt fruits of my labours, to your Majesty: not expoſed to others view, but gathered purpoſely, and tendered moſt humbly to your Majesty; not in a præſumption of any thing worthy your acceptation, butt in a gratefull ſence of your goodnes to him who deſires to own it, with his own conviction and endeavour to convince others.

He

THE AUTHOR'S DEDICATION.

He hopes these Analec̃ta in his own profession will not be improper for his Prince's view; the subject thereof being that Government, wherof yourselfe is the Head, and therein concerned more than any others: and that if somewhat heerin occurs in vindication of your Majesty's Government from calumnies, and scandalous invectives, cast uppon it by ignorance and malice; and, to shew its dependance uppon the sacred Politie; the unparalleled justice, and equality, of it; with its approbation, and continuance, under so many conquests, changes and ages, as have past under your royall Auncestors; with some resemblances in other Governements; it will not be displeasing to your Majesty. To whom, if any syllable heere may be usefull, or acceptable, I have my end: if not, I shall hope for my pardon, from your accustomed goodness; bicause my designe could be nothing else, butt to give a perticular testimony of the duety, and gratitude of,

Sire,

Your Majesty's most humble

Most obliged,

And most obedient Subject,

BULSTRODE WHITELOCKE.

The Writt.

Carolus secundus Dei gratia Angliae, Scotiae, Franciae,
 et Hiberniae rex, fidei defensor &c. vicecom. Bucks
 salutem. Quia de advisamento et assensu concilii nostri,
 pro quibusdam arduis et urgentibus negotiis, nos, statum et
 defensionem regni nostri Angliae, et ecclesiae anglicanae con-
 cernen. quoddam parliamentum nostrum, apud civitat. nostram
 Westm. octavo die maii proximi. futuro, teneri ordinabimus;
 et ibid. cum magnatibus et proceribus dicti regni
 nostri, colloquium habere et tractar. Tibi praecipimus firmiter
 injungentes, quod fact. proclamat. in proximi. comitat. tuo,
 post receptionem hujus brevis nostri tenend. die et loco praedict.
 duos milites gladiis cinctos magis idoneos et discretos comitat.
 praedict. et de qualibet civitat. com. illius duos cives, et de
 quolibet burgo duos burgenses, de discretioribus et magis
 sufficientibus, libere et indifferenter per illos qui proclamat.
 hujusmodi interfuere, juxta formam statutor. inde edit. et
 provis. eligi; et nomina eorund. milit. civium et burgens.
 sic electorum, in quibusdam indentur. inter te et illos qui hu-
 juscemodi electioni interfuerint, inde conficiend. sive hujuscemodi
 electi presentes fuerint vel absentes, inseri; eosq; ad dictum diem
 et locum venire fac. Ita, quod iidem milites plenam et suffi-
 cientem potestatem, pro se et communitat. comitat. praedict. ac
 dicti cives et burgenses pro se et communitat. civitatum et
 burgorum praedictor. divisim, ab ipsis habeant, ad faciendum et
 consentiendum his quae tunc ibid. de communi concilio dicti
 VOL. I. B regni

regni nostri (favente Deo) contigerint ordinari, super negotiis ante dictis. Ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem milit. civium aut burgens. praedictorum, dicta negotia infecta non remaneant quovis modo. Nolumus autem, quod tu, nec aliquis alius vicecomes dicti regni nostri, aliquallyter sit electus: et electionem illam in pleno comitatu factam distinde et aperte, sub sigillo tuo et sigillis eorum qui electioni illi interfuerint, nobis in cancellar. nostram, ad dictum diem et locum certifies; indilate remittens nobis alteram partem indentur. predictarum presentib. consut. una cum hoc breve. Teste meipso, apud Westmonasterium die anno regni nostri decimo tertio.

It may be thus changed into the English.

Charles the second by the grace of God of England, Scotland, France and Ireland, king, defender of the faith &c. To the sherrife of Bucks greeting. Whereas by the advice and assent of our counsell, for some great and weighty affayres, concerning us, the state, and defence of our kingdome of England, and of the church of England, we have ordeined our parlement to be holden att our citty of Westminster, on the eight day of may next insuing, and there to have conference and treaty with the great men and peeres of our said kingdome, we commaund you, firmly injoyning, that having made proclamation in your next countey court, after receipt of this our writt to be holden, you cause on the said day and place, two knights girt with swordes, the most fitt and discreete of the said countey, and of every citty of that countey, two cittizens, and of every borough two burgeses, of the more discreet and most sufficient, to be freely and indifferently chosen by those who shall be present att such proclamation, according to the forme of the statutes therof made and provided, and the names of the said

said knights, cittyzens and burgeses so chosen, in certaine indentures between you, and those who shall be present att such election, to be therof made, whither the persons so chosen be present or absent, to be inserted; and them you cause to come att the said day and place. So that the said knights have full and sufficient power for themselves and the commonaltie of the said countey; and the said cittyzens and burgeses for themselves and the commonalty of the said citties and burroughs; severally from them, to doe and consent to those things, which then and there by the favour of God, shall happen to be ordeined by the common councell of our said kingdome, uppon the said affayres; so that for default of such power, or through improvident election of the said knights, cittyzens or burgeses, the said affayres remaine not undone in any wise. And we will not, that you, or any other sherife of our said kingdome, by any means be chosen. And that you certify forthwith unto us into our chancery, att the said day and place, the said election made in full countey distinctly and openly, under your seale, and the seales of those who shall be present att the said election; sending to us one part of the said indentures annexed to these presents, togither with this writ. Wittnes our selfe att Westminster the day of in the thirteenth yeare of our reigne.

C H A P. II

Charles the second.

MY intended methode is to proceed upon the words of the writ, as they lye in order; the first wherof are these. Charles^a the second &c. that is, Charles the son of Charles, or Charles from Charles: and from that name some have given a praefage of much power and greatnes in him that bears it, which I hope and heartily wish may be more and more increased in the owner of this name.

Our english antiquary^c fetcheth the name of Charles from the german language, from carl, which in their tounge signifyeth, strong, stout, couragious, valiant. This hath bin approved both at home and abroad, most agreeable to the temper and condition of our Charles, who hath given sufficient evidence therof. The german antiquary^d holds also the originall of this name to be from the antient teutonick, in which tounge he saith it was at first, Gar-Edel, by abreviation whereof it became, Careal, and Carl, or Karle; that gar, which is also pronounced, car, signifies in that language, all, and edel signifies, noble; as ealman or edelman a nobleman; so Car-eal, or Car-Edel is as much as to say, all noble. And this I myfelfe, and very many other of his subjects have cause to acknowledge to be truely the disposition of our Charles.

The Germans used to preferre the sons of virtuous parents^e, because they hoped that the sons would be aemulous of their fathers

^a Carolus secundus.
tit. Names.

^b Carolus a Carolo.
^d Verstegan, c. viii. p. 249.

^c Cambden's Remains,
^e Hinckmar. Epist. iii. c. 17.

Quod virtutis eorum aemulos sperarent.

virtues; as Quintilian^f observes sons for the most are believed to be like to their parents and auncestors. And to the same sence it is said, ^g that the affections of the sons use to answer the dispositions of their parents. It is spoken in the commendation of Solomon, ^h that he loved the Lord, walking in the statutes of David his father. ⁱ Jehosaphat is also commended, because he walked in all the ways of Aza his father, he turned not aside from doing that, which was right in the eyes of the Lord. And the like is observed in severall other ^k places of the holy Scripture. Our Charles is truly the son of Charles, a second Charles, inheritor of his fathers virtues, succeeding him in his royall qualities, as well as in his name and crowns: strong, stout, couragious, valiant, all noble, as their name doth signify, a true description of their mind, like that of Aufonius to Probus.

^l The supream Ruler of the worlds great frame
 Commaunds, that men be call'd by such a name,
 As with their manners signifies the same.

It is related of our antient British king Gurguntius, that throughout all things ^m imitating his fathers actions, he loved peace and justice. Our Charles not only imitates his father Charles in loving peace and justice, butt ⁿ follows his example and advice, and that of his heavenly father, in a high love and exercise of clemency and mercy;

^f Lib. v. c. 10. Similes parentibus et majoribus suis filii plerumque creduntur.

^g Saxo. lib. iii. Hist. Dan. filiorum affectus paternis soleant ingeniis respondere.

^h 1 Chron. iii. 3.

ⁱ 1 Kings xxii. 43.

^k 2 Kings iii. 2. and xiv. 3.

and xvi. 2. and xviii. 13.

^l 2 Chron. xxxiii. 22. and xxvii. 2. Ps. lxxviii. 8.

Lu. vi. 23. Zach. i. 2.

^m Qualem creavit moribus jussit vocari nomine mundi supremus arbiter.

ⁿ Imitans pacem et justitiam amabat.

^o K.

Charles his book in his solitudes and sufferings.

which

which will gaine peace to himselfe heer, and everlasting mercy heerafter. It was good advice, which Otho the emperour gave uppon his death bed to his nephew and successor Coccius, whom he sent for and thus admonished. ° My son, neither wholly forget, nor altogether remember, that Caesar was thine uncle. Heerby (as Suetonius notes) he exhorted the young man every way, to moderate his mind; that remembring the emperour was his uncle, he should imitate his virtues, and not be a reproach to his auncestors; butt that in the mean time, he should not so remember him, as therby to waxe proud, or to contemne others: and this way and course of imitating the fathers actions by a prince, will render him the more pleasing both to God and men.

Besides that etimology of the name Charles, there be divers others in the german language, which are very significant; as Adam signifies, living breath; Eve, even the same; Cain, is wrathfull; Abel signifies, a man inabled to the service of God; Seth is, placed in the roome of another; Henoch is, law yet againe; with very many the like: and of the same sort are many of our antient english names; as Alwin signifies, all winning; Anselme is, defence of authority; Bede, a devout man; Caradock, dearly beloved; Cuthbert, famous; Cadwallader is, warlike; Eadgar, blessed; Dunstan, the same with Aaron, that is, a mountaine of strengthe; with a number of the like, too many to be heer inserted: or those among the Romans and Graecians, who had many ^p names of great veneration amongst them, and very significant, as to the qualities of the persons so named.

° O fili habuisse te patrum Caesarem nec prorsus obliviscaris, nec admodum memineras.

▪ Virius, Valerius, Valens, Craterus, &c.

C H A P T E R I I

7

The Hungarians call a king by the generall name of Carl^a, signifying with them a king ; and Carl is only in the coynes of Charles the Great. Abraham had that name given by God, in relation to the promised blessing to him and his seed ; and accordingly it signifies in the hebrew^r, a high father of a multitude, a father of many nations ; such a father of a multitude, of many nations, hath God made our Charles : and may the blessing of Abraham be upon him and his for ever.

^a Aventinus.

^b אברהם Pater excelsus multitudinis.

P. A. H.

By the grace of God^a.

TH E S E words are familiar in the titles of the kings of England, France, Spaine, Sweden, Denmarke, and others of Europe. Chaffanaeus and Rebuffus^b hold, that no other ought to use this stile, butt such a prince as acknowledges no superiour; and it imports in it selfe as much as an assertion of being independant uppon any save God himselfe: yett by use it hathe also bin communicated by princes to their subjects of greater note, and such as are not princes; but where it hath not bin settled in a subject by some lawfull title, there the use of it is an usurpation uppon the supreame dignity, on which it depends.

Of this opinion is the spanish lawyer^c, who confutes Chaffanaeus and Rebuffus: butt the stile of, ^aby the grace of God, might be used by Johan as queen of Castile, as well as by her as dutchesse of Burgundy: as our kings of England writing themselves, by the grace of God kings of England, France, lords of Ireland, dukes of Normandy and Aquitaine, and earls of Anjou, doth not necessarily importe, that they were by the grace of God dukes of Aquitaine &c. So in the title of the bishop of Ely, William by the grace of God bishop of Ely, chancellor of our lord the king, justice of all England, and legate of the apostolick see; the stile, by the grace of God is applyed only to his being bishop, not to his other offices; as that of John of Gant, who wrote himselfe, by the grace of God king of Castile, and duke of Aquitaine and Lan-

^a Dei gratia.
ante vac. art. ii.
rin. 36.

^b In consuet. Burg. &c. ad constit. Reg. tom. ii. et benefic.

^c Marcus Salon de pace, proem. Rebecq. in Leg. Taur-

^d Por la gracia de Dios.

cafter &c. by the grace of God, hath reference to his foveraigne title of king, not to his dutchies or earldomes.

But in elder and later times, this ftile is frequently used by bi-
shops, and by the master of the temple^u; and is common in the
instruments of bishops and abbots, in the lieger bookes or chartu-
laries of monasteries yett remaining in divers hands: and by the
stile of the chancery, in the summons of our parlements and writs
to assemble or prorogue the convocations, the king gives to the
archbishops the attribute of, by the grace of God; and in writs of
some other nature in the Register^w, and Fitzherbert^x. But now they
use it not in the first person, butt, by the clemency of God^y, or by di-
vine providence; though in elder times, by the grace of God, was
usuall in their titles; as appears by the merry story of Walter Ma-
pez^z, that Reinold being by corrupt means chosen bishop of Bath
and Welles, when the archbishop of Canterbury refused to conse-
crate him he went to the pope, and by lusty bribes obtained his bi-
shoprick; and then (saith Mapez) lying to God, in the beginning of
all his instruments where he should have written, by the grace of
the purse, he said, by the grace of God^a. An old manuscript^b gi-
veth divers rules for the use of this stile above 300 years since; which
is sett down by the second (edition of) Titles of honor largely. It was
used by the duke of Somerset^c, in E. 6. time, in his title. Butt the an-
tientest use of it with us was by Ina^d, a west saxon king, who in the
praeamble to his lawes, writes himselfe thus: 'I Ine by the grace of God

^u Epist. Reg. et Princ. edit. in tom. ii. Gest. Dei per Franc. p. 1176.

^w F. iii. a. & b. 42. b. &c.

^x Fitz. n. b. fol. 132. & 2. E. &c.

^y Dei

elementia, Providentia divina.

^z De nugis curialium, MS.

^a Ubi

debuisset scribi, burfae gratia, Dei gratia dixit.

^b Rosula novella MS. c. 112.

^c Holinshed, p. 1237.

^d Lamb. Saxon Lawes.

^e To Ine mid godes

þæt he æt-geaxnað Cuning.

king of the west Saxons &c. and so doe some of his successors. About our H. 3. time it came into a constant use with us, and in other kingdomes; as in the stiles of the archdukes of Austria, the dukes of Saxony, Baviere, the counts palatines of the Rhine, marquesses of Brandenburg, and other of the german princes, it is obvious. The landgrave of Hesse hath it also frequently in his epistles to Tycho Brahe, as William 'by the grace of God landgrave of Hesse &c.

Some of the turke's bashawes^e have also used this stile; and the dukes of Venice, who have their power from the state there, yett alwayes stile themselves, by the grace of God duke of the Venetians, both in their seales and inscriptions. Robert Guiscard, duke of Apulia and Calabria, afterwards king of Sicily, a feudatorie to the pope, writes it with this qualification^h; I Robert by the grace of God and of St. Peter, duke of Apulia &c.

In some of the patents of Charles the great, this stile is inserted; and that seemes to have bin the antientest use of it in the empire. The greek emperors are not observed to have used it att all, butt instead therof write themselves, crowned of Godⁱ; implying, by the grace of God; with other the like expressions. About 400 years since^k, it came to be a fixed stile in most kingdomes of Christendome: and in some kingdomes the use of it was neere as antient as christianity.

Surely no prince of Europe could ever more justly and more significantly insert those wordes, by the grace of God, in their stile,

^f Von Gottes gnaden.
descrittione del regno de Neapoli, p. 420.

^e Turkish history.

^h Scipio Mazella nelle

ⁱ Θεοσεφής.

^k 2 Tit. hon.

than our present king Charles the second may make use of it; both in respect of his right and title to that, and to all other privileges and rights of majesty; and likewise upon a serious consideration of the speciall grace and goodnes of God towards him. Whence was his preservation abroad, in the midst of so many and great daungers? whence his restitution to his crown and countrey? was not all by the grace of God, and that hardly to be paralleled in story? May this stile be still more peculiar to him than to other princes! May it be written in his instruments and actions! May it be ever remembered by him, and watch over him!

Of England, Scotland^a.

I putt these two kingdomes under one head ; so God hath happily placed them in one island, of one religion and language, and united under our gracious soveraigne by the happy accession of his royall grandfather to both crownes, and his lineall discent and inheritance to them ; and that they both may be the better considered in the generall name of them. Touching first the perticular name of England, I find some little variety of opinion when it was introduced : John of Salisbury and Polychronicon^b say, that the name of England was from the first comming of the Saxons and Angles into this island ; and I have past a countrey in Germany neere Juitland, which some of them now call Anglelandt, and from whence they would have England to be so named.

Hector Boetius^c and others will have it to be brought in by Hengest, when he invaded and made his conquest in this part of our island : and venerable Bede^d mentions that countrey in Germany called England, before the Saxons came into Brittain, the inhabitants wherof were called then Angles, and invaded Brittain with their countrymen the Saxons : and these Angles^e gave it the name of their own countrey England.

This countrey of England in Germany, is by Crantzius called Anglia^f, that is England, in plaine language. It lyes between Juitland and Holfatia : and from hence the Saxons went into Brittain,

^a Angliae, Scotiae.^b 6. c. 16.^c Scot. Hist. 7. et Jo. Gaver, Epig.

in conf. amant. et Pardingus.

^d Hist. Eccles. Angl.^e Cambden,

Ethelwerdus.

^f Verftegan, p. 123.

and called that part of it, where they settled, England^e; which could not be so called (as one^h fancieth) from Angul the brother of Dan, the first king of Denmarke, who dyed many hundred years before any part of this island was called England: butt possibly from him that old England in Germany, might take its name; or (as some suppose) from enghe, which in the german tongue signifies narrowⁱ, straight, or a nooke; and such a countrey that old England is, and therefore might be called England, as being a narrow or streight land: and from thence also some suppose our countrey being narrow, to have also taken the name of England. Att the Saxons first settling heere, and in the time of the heptarchy, it is noted to be found in some antient writings, that our country was called Saxony^k beyond sea, and so stiled by forein writers; and new Saxony^l: and att this day the Welch and Irish call us Soissons or Saxons. The most authenticke testimony of the change of the name to England is, that Egbert king of the west Saxons, whose glory and greatnes consisted in the swallowing up of the other subject kingdomes into his own rule; he considered, that so many different names, as the distinct kingdomes of the heptarchy before had caused, was no more necessary; and that as the people were all originally of one nation, so was it fitt they should againe be brought under one name: and being affected with the name of Englishmen, by pope Gregory his alluding the name of Engilisee unto Angel-like^m; as in the german language, ein Engelchewan signifies both an angel-like man, and an english, and they have no other word for both those expressions. King Egbert in a parlement att Winchester, changed the name of the kingdome by the consent of his people, and commaundedⁿ it

^e Henricus Rantzovius.^h Saxo Grammaticus.ⁱ Cornelius Kilianus.^k Saxonia transmarina.^l Nova Saxonia.^m Ex Instrum. lib. Hospit.

S. Leonardi Ebor.

ⁿ Alred. Rhevallenfis vit. S. Edw. jussit illud de caetero

vocari Angliam.

from thenceforth to be called England; which some compute to be the year 800 after Christ.

The next word in the writt is Scotland, which name is fetched very high by those^o who bring it from Scota, the daughter of Pharaoh king of Aegipt; who in the time of Moses was married to Gathelus, a noble Graecian, the son of Cecrops who built Athens. This Scota had many children by Gathelus: and in honor of her name, such as came of the posterity of that nation were afterwards, and are att this day called Scoti,[†] Scottishmen; and the land where they inhabite, Scotia, Scotland. That this Gathelus being warned by the oracle, and seeing the beginning of the sore plagues in Aegipt, for the cruelty used towards the Isralites; Gathelus with his wife and children and people, putte to sea, to seeke for another habitation; and first planted in Spayne, where increasing, two of his sons landed in Ireland; and from thence some of them transplanted themselves into the northerne part of this island, to which they gave the name of Scotland, themselves being called Scottishmen, as before is fancied: and they made alliances with the Picts, a people who came from the northerne countryes, so called from painting themselves. And these also setled in that part of this island, which is called Scotland.

That the Gothes, Danes, and those northerne people came into Scotland, with their king Fergus the second, in the year of Christ 404, is agreed by their historians^p: and those nations were of old time called Schithi, and Sciti, and Sueui, and Scythians; as well as Swedes. The Graecians called all the northerne people Scythians, perhappes (saye the illustrations on Polyolbion^q) from shooting: and

^o Hector Boetius. Holinshed. Hist. of Scotland, p. 29.

[†] Chron. Scot.

^q J. Seld. p. 122.

by tradition from the Scythians, themselves they had very antiently a generall name titling them Scutten, which is soone contracted into Scots. Doubtles the name of Scottishmen, and of Scotland, is of as great antiquity as any part of their storyes.

Geffrey of Monmouth^r relates of the three sons of Brute, Locri- nus the eldest, who gave to the south part of the island, now called England, the name of Loegria; Camber his second son, who had for his part Wales, and gave it the name of Cambria; and Albanaetus the third son, who had for his share the north part of the island, and called it after his name Albania; which severall names were all drowned in that one name of Brittain, given to the whole island, whether from Brute the trojan or not, is not very necessary to dispute. And although^r Camb- den, and Verstegan, and others take great pains to confute the story of Brute as fabulous; yett I find a better authority^r for confirmation of much of that story, which is in those notable letters written by our king Edward the first, in the 29th year of his reign, with the ad- vice and assent of his parlement, unto the pope, touching the supe- riority of the crown of England over Scotland. In which letter is recited, ^u that in the time of Eli and Samuel the prophet, a certain valiant and eminent man named Brutus, of the race of the Trojans, after the destruction of that citty of Troy, with many noble Tro- jans, landed in a certaine island, then called Albion, and inhabited by gyants, who being vanquished by his power and slain, he called ^w it after his own name, Brittain, and his companions, Brittons.

Heere we find the name of Brittain from Brutus, by the testi- mony of this letter; and the name of Albion before that, given to

^r f. 10. 11.

^s Britannia, p. 92.

^t Tho. Walsingham. Hist. Angl.

p. 81.

^u Temporibus Heli et Samuelis prophetae, vir quidam strenuus et in- signis, Brutus nomine, de genere Trojanorum &c.

^w Eam de nomine suo

Brittaniam, sociosq; Brittones appellavit.

this island. Some remember also the name of Samothea before that: and although they deny Brute to have bin a trojan prince, yett they allow a prince of that name to have come out of Gaule hither^x, before (as they say) this was an island; and to have called it after his name, Brittain.

My lord Coke^y fetcheth the derivation of Brittain from the greeke, and sheweth the intercourse in those dayes between the Graecians and us; for which he citeth Caesar^z in his Commentaries; that the Druides, the great judges heer and in Gaule^a, did use greeke letters, and that from Brittain the discipline of the Druides was carryed over into Gaule: for which Pliny^b also is cited, and the name of Druides fetched from the greek word^c which signifies an oak, because they frequented woods where oaks were, and in their sacrifices used the leaves of those trees. He mentions also the traffique^d between the Massilienses a colony of the Graecians, and the Britains: of which^e Strabo affirmeth, that they used to fetch tinne from the brittish islands to Massalia; and that the Britains sacrificed to Ceres and Proserpine, according to the greeke forme of superstition, as they did in Samos^f.

Upon these and many other the like grounds he derives the name of Brittain from the greek. Brit (saith he) in the old brittish language signifies painted; and so in greeke the like word^g for a picture; and tania^h in the greeke signifies land: so Brittain is as much as the painted land. And in conformity to this, Juvenall calls

^x Verslegan, c. 4. p. 90.

^y Epist. to the 3. Rep.

^z L. vi. de bel.

Gallic.

^a Graecis utuntur litteris.

^b L. xvi. c. 44.

^c δρυς.

^d ἐκ τῶν Βρεταννικῶν νησῶν εἰς τὴν Μασσαλίαν κομίζεσθαι.

^e Strabo. l. iii.

^f ἐν τῇ Σαμοθράκῃ. The passage is in the 4th book, and does not quite come up to this assertion; the words being Ἀρτεμίδωρος—φησὶν εἶναι νῆσον πρὸς τῇ Βρεταννικῇ; καθὴν ὁμοῖα τοῖς ἐν Σαμοθράκῃ, περὶ τὴν Δημέτραν καὶ τὴν Κόρην ἱεροποιεῖται. (M)

^g τὸ βρέτας.

^h τανία

our islanders, ⁱ painted Britains; and ^k Caesar saith, that they painted themselves to make them seem fearfull in fight to their enemies.

Sr. Tho. Eliot would have it to be Pritania. Humphry Lluyd calles it Pridcain, bicause that word in british signifyeth beauty or whitenes; as before it was called Albion, as some would have it ^l from the white rockes or cliffes on the sea side. Others will have it Olbion from the greeke, signifying an happy island; as (blessed be God) now it is, being in peace, and under the flourishing empire of our gracious monarch. And two such kingdomes as England and Scotland are, so great, so noble; and so happy an island as Britain is, so blessedly united, may deserve in the honor of it, a disquisition into it's name and appellation.

ⁱ Pictos Britannos. ^k Commentar. l. v. ^l Ab albis rupibus.

France and Ireland.

TO beginne with France, as next in our king's title. I purpose not to inquire into the old conquests in the times of Lucius, Belinus, and other of our elder kings: butt since the accession of the dutchy of Normandy by William the first, to the crown of England, the territoryes of the kings of England in France increased very much; so that our King Henry the second became very great in his dominion, having all the land and sea under his subjection from the Orcades, to the Pyrenaeen mountains which part France and Spaine. England and Scotland he had, by that which is called the Norman conquest: these and Normandie were laid together by H. 1.; Anjou, Touraigne, and Maine were the inheritance of his father, the first Plantagenet; Poictiers and Aquitaine he had by his wife; and Brittain he held as his dukedome of Brittain. It is true, that by the forfeiture of king John for the murther of prince Arthur, a great part of all this was seised by the king of France; and most of it lost afterwards. Butt a new title to France is sett up by our king E. 3. *by the perswasion of Robert of Artois, discontented with the french king for judging against him, and for his aunt, the earldome of Artois: and being sought for to be apprehended by the king of France, he fled into England to E. 3. and putt him in mind of his right and title to the crown of France; which was as son and heir to the sister of Charles king of Fraunce, who dying without issue, the right and title of the crown of Fraunce descended upon E. 3. his sister's son. Against which, the party of Philip of Valois

* Baker Hist. of England, p. 170. Daniel Hist. of Eng. p. 225. Tho. Walsingham, p. 143.

then gott into possession of the crown, had nothing to object butt the pretence of their salique law, which barres (say they) the female line from the inheritance : and by this they would barre E. 3. from his right to France ; though in other cases, that salique law was not held in force among them.

King E. 3. prepares for the gaining of his inheritance in France : publisheth his title to the pope and neighbour princes : enters into a league with divers of them ; perticularly with Flanders, where by perswasion of the Flemings he tooke uppon him the stile, title, and armes of France ; wherby they held they might the better justify their pertaking in his quarrell, and dispence with their oath formerly made to the french king ; having besides bound themselves in 20 hundred thousand markes, never to beare armes against the king of France. And theruppon this league was established between them, and king Edward. And this taking of the armes and title of king of France, is mentioned in our ^b Parlement rolles of that time.

The gallant exploits performed by this king, and by his son the black prince, perticularly in the famous battles of Poictiers and Cressy, in pursuance of this title to France, are extant in all our stories. So are the memorable actions of our king Henry the fift, and the famous battle of Agincourt : after which it was agreed, that after the death of the then king of France, H. 5. and his heirs should succeed in that crown ; and he be regent during the life of the king of France. Accordingly his son H. 6. was crowned in Paris king of France : and possession of his right was nobly mainteined there, as long as his renowned uncle the duke of Bedford lived ;

^b Rot. Parl. 14 E. 3. n. 10.

but after his death, and in the reigns of the succeeding kings, all was lost again in France; and lastly Callis it selfe in queen Maries time, and nothing of that continent left to our english kings. Yett a few islands sometimes part of Normandy, Jersey, Guernsey, Sarke &c. still continue their obedience to the crown of England, which also still retaines the just right and title to that of France; and gives the armes quartered with those of England and Ireland; and writes the stile of king of France to this day.

The next word in the king's stile is Ireland, a considerable kingdom, and a large and fruitfull island, antiently belonging to the crown of England, since the time of our king H. the second. It is reckoned the third island in the world for greatnes: the first is accounted the indian Taprobane, next after it, Brittain, and in the third place (saith Ptolomy) another british island, called Hibernia, that is, Ireland; and he calleth it, Little Brittain.

The antient names of it are divers: by some authors^c of elder date it is called Ierna, by others Juverna, by others Iris, and Joyernia, Oyernia, and Bernia. The natives called it Erin, the Britains named it Yuerdhon, and the English Ireland: most of them neere the term that the inhabitants give it, Erin, which Cambden derives from the irish word Hiere^d, signifying with them the west; and so this the westerne countrey. Which is the more probable, bicause it lyeth furthest westward of any region in Europe; and the river running in the most remote west part of the island, is by Ptolomy called Iernus; and the most westerne promontory of Spaine is by Strabo called, Ierne. Festus Avienus calleth it the Holy island^e.

^c Orpheus, Aristotle, Claudian, Juvenal, Mela, Diodor. Sicul. Martian. Eustathius.

^d Hibernia, p. 61.

^e Sacram insulam.

I omit the fancies of Hibernia to be so called from the winter season^f; and of Pomponius Mela^g that would have it Jurin, that is, the Jewes land, who planted themselves heere; and of the name Ogygia, from ancient: nor shall I insist upon the before recited story of Gathelus, from whose wife Scota, the daughter of king Pharaoh of Aegipt, those that were descended were called Scotts men; and two of her sons with their people, comming from Spaine, landed in Ireland; and from one of them named Hiberus, that island was called Hibernia: and from them also some^h authors named it Scotland, as those people were called Scotts men, and gave that name of Scotland and Scotsmen to the north part of this island of Brittain, which they invaded from Ireland. Butt I shall come to neerer times, and begin with the accession of that island to the crown of England, in the time of our king Henry the second. When this island being full of petty kings and tyrants, was in such a divided estate, that easy occasion might be taken by their neighbours to invade them. Our King H. 2. affecting the crown of it, sent ambassadors to pope Adrian 4.^h an englishman borne; to have leave to invade Ireland with hostility, to subdue the land, andⁱ to reduce those bestiall men to the faith and way of trueth, and to extirpate there the plants of vice. John of Salisbury bishop of Chartres, chiefe of the ambassy and in great favour with the pope, procured a bull from him, reciting, that all the isles belonged to the church of Rome: whereas the donation of Constantine (from whence his holynes claimes) gives only the isles of Italy to that see. By this bull the pope graunts to H. 2. that the people of Ireland should receive him, and reverence him as their lord: saving the right of the church, and Peter pence, &c.

^f Hiberno tempore.

whence this appears to be taken. (M)

^h Math. Paris. Histor. Angl. ff. 2.

^g Rather Postellus. v. Cambden's Hibernia, from

^h Isidore. Bede. Scotia.

ⁱ Homines illos bestiales ad fidem, &c.

John of Salisbury writes ^k, that att his petition, the pope graunted Ireland to the king, to possess by hereditary right; and sent by him to the king, a gold ring sett with a pretious stone, for investiture of Ireland: butt nothing was executed. Some years after, the king of Leinster requested succours from England, against his enemyes: and Richard Strongbow earle of Pembroke went over with forces to his assistance, and prevailed so much, that he grew suspected by the king: butt he acknowledged all that he had gotten to be for the king. And about 17 years after the bull, the king himselfe went over into Ireland with an army, subdued a good part of it, and had homage of those petty princes, who after that, as before, did retain the name of kings. Yett saith a ^l record of Ireland, they were not ordeined with the solemnity of any order, ^m nor with the sacrament of unction, nor by right of inheritance, or any succession of property; butt by force and armes every one obtained his kingdom. King Henry following the syllables of the bull, titled himselfe, lord of Ireland; so did his successors; and to E. 2. or 3ⁿ. the bull was renewed by pope John: and this title they putt in their stile before duke of Guienne. And in confirmation of king John's title, pope Urban 3. sent him a crown of peacockes feathers. And this title of lords of Ireland our kings used; though Choppinus affirmes, that the pope graunted to H. 2. the principality of Ireland^o. King John established there english lawes and officers, fully related by Mathew Paris. And though our kings did write themselves butt lords of Ireland, and called it the land, not the kingdom of Ireland; yett their dominion was meerly royall: and they had their justices, lieutenants or deputies, which were as viceroys,

^k Metalog. iv. c. 42.

^l Black booke of Christ church in Dublin.

^m Nec unctionis sacramento, nec jure haereditario, vi et armis quilibet regnum suum obtinuit.

ⁿ Constit. pontiff. memorat. a Choppino, de domanio Franciae, l. ii. tit. i. ff. 11.

^o Hiberniae principatus titulum.

and power given them, with very rights of majesty. And R. 2. being himselfe butt lord of Ireland, created Robert Vere duke of Ireland, with the fullest prerogatives of majesty; and that with assent of parlement, and by liege homage only: with the patronage of all bishopricks, abbyes, and the like; and power to make a chancellor, treasurer, justices of both benches, barons of the exchequer, sheriffs, coroners, and all other such officers; right of coyning money, and the like royalties mentioned in the ^p patent which is extant on the record, and in the ^q Titles of honor att large transcribed.

In the latter end of king H. 8. the title of lord of Ireland was altered into king, by an act of that ^r parlement; reciting, “that the kings of England have bin lords of Ireland, having all manner of kingly jurisdiction, and authority royall belonging unto the royall estate of high majesty of a king; and by the name of lord only of Ireland, where they were, and of right ought to be kings of Ireland, and so reputed and called: and that for want of that name and title of king, divers attempts of disobedience had bin in the Irishry.” This statute therefore enacts, that “the king, his heirs and successors have the name, stile, title and honor of king of this land of Ireland; with all prerogatives, &c. to the majesty and state of a king imperiall belonging; and be from henceforth named, called, accepted, reputed, and taken, to be kings of this land of Ireland: to hold and injoy the said stile, title, majesty, and honours of kings of Ireland; with all praerogatives &c. to the king’s highnes, his heirs and successors for ever; as united to the imperiall crown of this

^p Rot. cart. 9. R. 2. m. 1. and Rot. parl. 9, and 10. m. 3.
hon. p. 39.

^r Statut. Hibern. 33 H. 8. c. 1.

^q Seld. 2 Tit.

realme of England." And this was also confirmed by * pope Paull 4. to king Philip and queen Mary.

Thus the title of our kings became, as it is in this writ, king of England, Scotland, France, and Ireland. The which title king James, uppon his accession to the crown of England, would have altered unto "King of Great Britain, France, and Ireland;" butt our Parle-ment would by no means assent unto it: the reasons whereof are ex-press'd in a little manuscript treatise, which I have seen of that matter.

I have also seen a charter of king Edgar under the authentick seale, where he useth this title: "By the large clemency of the high thundering God, who is king of kings and lord of lords, I Edgar king of the English, and of all things of the islands of the ocean, which incompasseth Britain, and of all nations which are included in them, emperor and lord." And then he signs with this stile: "I Edgar king of the English, emperor of the kings of the nations, have confirmed &c." Tho. Walsingham "reports this king Edgar to have four kingdomes; and stiles him king of England, Scotland, Denmarke, and Norway: and his owne charter testifies his subdu-ing of Ireland besides. Butt I shall spend no more time uppon these titles; only wish the continuance, and increase of honor and prospe-rity, to the present.

* Anton. Gabutius, de vita et rebus Pii. V. l. 1. † Altitonantis Dei largiflua clementia, &c. Ego Edgarus Anglorum basileus, &c: N. B. There is preserved in the british Museum, MS. Harley 7513, a charter which agrees with this quotation of our author, as far as is here recited. The charter is in the hand of the times, signed with the names of the king, and others present, in the same hand: with crosses prefixed to each name, seemingly by different hands, and giving it much the air of an original; notwithstanding what the learned Dr. Hickes is pleased to say concerning it, in page 86 of the "Dissertatio Epistolaris," who may be consulted. The "authentick seale" to the copy Sir Bulstrode saw, (if there be no mistake,) leads to further considera-tions. (M) " P. 55. Hist. Angl. E. 1.

C H A P. VI

King.

TH E king of England is the head of the people, and of their representatives in parlement; the soveraigne lord and supreame governour of his people according to lawe: of most antient institution, constant continuance, and greatest benefit for the peaceable and happy government of those, over whom God hath sett him.

Butt this will not be admitted by some dissenting spirits, such as those whom Clapmarius^a observes, are never contented with the present state; butt are ever projecting changes in their own fancies, and can hardly say what they would have.

Some of these have objected against kingly government, that it is unlawfull, against the good of the people; nay, against the mind and word of God, and ought not to be received by God's people. Uppon this occasion, and att this time, it may not be amisse to examine their perticular objections, and to indeavour some answer to them.

1. They alleadge in matter of example, the evils and mischiefs that have befallen to people under kingly government: therefore the same ought not to be admitted. To which is answered, that the matter of fact cannot be denied, butt that the oppressions and mischiefs under evill kings, have bin very great and sharpe; and it would be a great volume that should conteine butt a smalle part of them. Butt the conclusion upon this fact, must be denied; or else the argument will be too farre extended. There have bin evill kings, therefore there ought

^a F. 71. Non praesenti statu contenti.

not to be any king. By the same argument it followes, there have bin evill judges, therefore there ought to be noe judges ; there have been evill ministers, therefore there ought to be no ministers ; nay there have bin evill men, therefore there ought to be no men.

The same deduction may be made from those things which are good, as well as from the bad. And uppon perusall of stories, as there are found examples of evill kings, and evill times under them : so are there likewise of good kings, and good times under them, wherein much quiet, peace, and safety, liberty and property have bin injoyed ; and which is above all, that the gospell of Christ hath bin received, and the freedome and happines of gospell rights, injoyed under them, and procured chiefly by them. To omit the stories of forein nations, out of which plenty of matter (though more might be desired) uppon this subject may be gathered ; in our own annales we find many good and pious kings, surmounting the number of the evill ones. To keepe mysele to the last sorte, we may remember Lucius the british king, who first received the faith of Christ in this island : and many of the saxon kings who imbraced the gospell, and lived answeareable therunto ; and some also after the norman invasion.

To come neere to our own time, since the reformation begunne by king E. 6. I thinke none will deny, butt that of fixe kings and queenes, five of them have continued the comforts and priviledges of God's people, and may justly be reckoned in the number of good princes. And it were to be wished, that one halfe were good, among any sort of men whatsoever. For the great warres under our kings, especially the civill warres, they cannot be imputed to the name or office of king, as the occasion of them : butt to injustice or oppression in some ; or rather to the iniquities and corruptions of sin-
full

full men, whom God punished by the sword for their transgressions. And it were to be wished, that our age were not too much infected with the like.

The civill warres between the houses of Yorke and Lancaster, were occasioned by the greatnes of the power and persons of those families. Not bicause of kings; butt whither an Edward, or a Henry should gett into the throne. And the bloud of the blessed martyrs was drawn by the mercilesse prelates, and others of those times, more than by the king's commaunds.

That good kings cause good times, is evident by the stories of all nations. Among the Hebrewes, David hath a perticular testimony of it. He is stiled ^b a man after God's own heart; and it is said of him, that he perceived the Lord had established him king over Israel; and that he had exalted his kingdome, for his people Israel's sake. The hebrew word ^c doth import knowledge, more than a perceiving; a certaine visiblenes of a thing: and the word ^d which we reade established, comes from the worde ^e that signifies to builde. So that it seemes to be the building and workmanship of God, to make a good king: and that David was so built, and made by God a king; and that out of love to his own people, for his people Israel's sake.

2. Some have objected, that by kingly government, the liberty and property of the people is destroyed, and submitted to the will and pleasure of the king: and therefore kingly government is not to be received. To this, somewhat hath bin said to the last objection, by way of answer. And it is true, that of all worldly things, liberty and property are the most pretious, and most carefully to be preserved.

^b 2 Sam. v. 12.

^c ידע

^d הִכִּינוּ

^e כִּן

And it cannot be denied, butt that where kingly government is such as the Israelites desired, like the nations about them, that was arbitrary and tyrannicall; there the liberties, and properties, and lives of all that are under such a king, are subject to his will, bicause his government is arbitrary; and no man hath any assurance, either of life or estate, under such a power. Butt where a kingly government is limited by good lawes, and rules, as that in Deuteronomy^e is praescribed to be; under that kingly government, the liberty, property, and lives of the people are in as much safety, certainty, and security, as they can be under any other forme of government whatsoever. So that it is not kingly power in itselfe, butt the good or bad institution and management therof, the arbitrarines, or the fixednes of it by lawe, which raiseth this objection and answers it.

3. Another objection hath bin made, that God himselfe instituted another government over his own people, and not that of kings; as that of Moses, Joshua, and the judges, who were not kings butt leaders of the people, and judges of their controversies: and therefore the government of kings, being different from that which was instituted by God, is not to be admitted. To this may be answered, that the government instituted by God over his people, was monarchicall and kingly, and the assertion of the contrary is mistaken; that the holy patriarches did exercise kingly power in their families; that 'Noah is reckoned a king before and after the floud, who was succeeded by his son Sem: and this title of king in Sem, is noted to be in expresse words in the holy story; according to the most received tradition, and consent of many authors, that Sem and Melchisedeck were the same person; for he is named ^e king of Salem. Abraham is stiled by the Hethites, a ^b mighty prince: and that he was

^e Deut. xvii.

^s Gen. xiv. 18.

^f Cedren. Berosus. Seld. Tit. honor. pt. i. p. 7.

^b Gen. xxiii. 6.

so, appears in his warre against king ¹ Cedorlaomer. Touching Moses, it is a great mistake in those who affirme, that he was no king: the expresse words of the text ^k give him plainly that name and title of king. Moses commaunded us a law; and he was king in Jeshurun. &c.

What is there meant by Jeshurun, is to be inquired. The hebrew ¹ hath it, king in Jeshurun; the chaldee, syriack, and persick versions for Jeshurun, do render Israel; the Spaniards doe the like, ^m he was king in Israel; the Germans agree heerwith; and Jeshurun is understood and rendered so, a little before in the song of Moses ⁿ. Butt Jeshurun waxed fatt, and kicked &c. which the Mauritians made, ^o the nation of the Jewes waxed fatt. The rabbins agree heerwith. And uppon that place of Isaia ^p, which is an exposition of it selfe in these words, Feare not, O Jacob my servant, and thou Jeshurun whome I have chosen; the greeke version hath a note, viz. for Jeshurun understand Israel. The Septuagint read it ^q, and he shall be prince in the beloved. Uppon this Tertullian ^r faith, a king shall arise out of the house of Jacob, in the congregation of the people. The arabick in the former place of Deuteronomy, hath [beloved] and in that of Isaia [the righteous]. The samaritan version faith, ^s king among the righteous. The moderne christians retaine the word Jeshurun; as Tremelius, the english translation under king James, the belgick and the italian. The old english translation under H. 8. hath in the first place [upright] in the latter [and he was

¹ Gen. xiv. 1.

^k Deut. xxxiii.

¹ יְהוֹשֻׁעַ בִּישְׁרוּן מֶלֶךְ

^m Y fue

en Ysrael rey,

ⁿ Deut. xxxii. 15.

^o Impinguata est gens judaica.

^p Isa. xlv. 2.

^q Καὶ ἔσαι ἐν τῷ ἀγαπημένῳ ἄρχων. N. B. τὸ ἄρχων deesse in codice alexandrino: et quum locus citatus sit εὐλογία ἢ ὑμολόγησε Μωυσῆς τῆς υἱᾶς Ἰσραὴλ, fatendum est, (quod cum pace aliorum dixerim) sensum integrum sic se habere.

^r "Jehovah erit in Jeshurun, congregatis principibus populorum, simul cum tribubus Israel. (M) De jejun. adversus Psychichos c. vi. Surrexit rex è domo Jacob.

^s In rectitudine rex.

in Israel king; likewise the translation under the bishops. The french in the former place of Deuteronomy, doe reade, "the righteous; and in the latter place they reade it, and "he was king among the righteous. Luther reades it, "and he bare the office as king, or of king. The belgick reades it, "and he was king in Jeshurun. Both christians and Jewes, and generally, the translators and expositors of the text doe all agree uppon it, as a cleer and undeniable trueth, without any dispute or difference of opinion, that by the word Jeshurun, the people of Israel are signified; and where it is said, king in Jeshurun, it is the same as if it had bin said, king in Israel. Neither are authorities wanting out of the hebrew authors, ^y that Moses was king. They have these expressions, and Moses our master was king, and Moses was king, and the like. ^z Another calls him a prince of princes, and a king over Israel. The like is also to be found with the christian writers. Hugh Grotius speaking of Moses saith, ^a that in kingly right he governed the people. Nazianzen saith, ^b Moses exercised the office of legislator, of judge, and of king. And of those two qualities of chiefe priest, and law-giving Philo saith, ^c that they are most agreeable to kingly power. Our learned ^d countryman declares his opinion to be, that Moses was in trueth king, or prince of the Israelites, according to the then divine institution. It seemes then, that he was king by divine institution; and if so, it answers this objection. When God directed Moses to make use of Aaron to speake for him, the text saith, ^e he shall be to thee instead of a mouth, and thou shalt be to him instead

^t Le droiturier. ^u Et a esté roy entre les droitz. ^w Under verwaltet das ampt eines koniges. ^x Ende hy was koninck in Jeschuron. ^y Levi Gerson. in Pirush, hottora. f. 245. col. 3. Aben Ezra. Maimon. tract. Beth Haben-hira, c. vi. ff. 1. ^z Philo de vita Mosis, l. ii. c. 3. ^a Jure regio populū gubernavit. ^b Orat. vi. ^c ὡς ἀρμοτῆσεις μάλιστα βασιλεῖς. ^d Seld. de Synedr. l. ii. p. 62. Regem fuisse Mosē reverā, seu principem Israhelitarū. ^e Exod. iv. 16.

of God; which is interpreted, thou shalt be to him a ^c prince or king. The hebrew word used in the text of Deuteronomy, is the only word in that language, which doth signify a ^f king; and is so translated in all other languages. The latine renders it rex, from whence the italian, re; the french, roy; the spanish, rey; the old brittish, rhi: the high dutch translate it, ein koing; the low dutch, en koningh; the Swedes and Danes, kong, and our english, king. And universally, all languages give unto that word in their translations of it, the expreffion which with them doth signify king.

Butt I may be censured to have insisted too long uppon this particular: I shall therefore contract myselfe. Joshuah who succeeded Moses, had the same power. God promised him, ^e as I was with Moses, so I will be with thee; and the people promise like obedience to him, as they did to Moses. ^h According as we hearkened unto Moses in all things, so will wee hearken unto thee: whosoever he be that doth rebell against thy commaundement, and will not hearken unto thy words, in all that thou commandest him, he shall be putt to death; which was doubtles a kingly power over them. The judges likewise did exercise monarchicall and kingly power over the people. David was a king highly approved by God. So was his son Solomon; Afa, Jehofaphat, Amaziah, Azariah, Jotham, Hezekiah, and Josiah. God was pleased with them: and the number of the good kings and approved by God, is not inferiour to those who did evill in the sight of the Lord. And surely God would not have given rules concerning the power of kings ⁱ, had the government by them bin contrary to his own institution.

^c Aaroni princeps.

^f מלך

^e Jos. i. 5.

^h Jos. i. 17, 18.

ⁱ Deut. xvii.

4. Another objection hath bin also made, against the government by kings, bicause the Lord is king over his people; and those who desire another king to reign over them, doe reject God, and doe that which is displeasing unto the Lord their king. To this may be answered, that by the same argument, bicause the Lord is king over his people, therefore they must have no other king; it followes likewise, that bicause the Lord is judge of his people, therefore they must have no other judge; or bicause the Lord is lawgiver to his people, therefore they must have no other lawgiver. It is expressed by the prophet^k: for the Lord is our judge, the Lord is our lawgiver, the Lord is our king, he will save us. As the Lord was their king, so he was their lawgiver, and their judge, as appear by this text; and if they were prohibited from having a king, bicause the Lord was their king, by the same argument they were prohibited from having a judge, or a lawgiver, bicause the Lord was their judge and their lawgiver. Butt the meaning of the text^l, that the Lord was their king, is, that he had appointed Samuel to rule over them: a man full of integrity and piety, approved and appointed by God who is king of kings, and therefore admits of kings under him. And whatsoever people having a Samuel to reigne over them, shall desire to depose him, and to have a king like the nations, an Agag to reigne over them; they may well be taxed to reject God, in such a choice of such a king. Butt this leads me to the last objection, which may seem the most weighty that I shall heere mention.

5. Some have objected (and that with much impetuousnes) that the government by kings is unlawfull; from that passage in Samuel^m, where the children of Israel desired of him to give them a king, like

^k Isa. xxxiii. 22. כִּי יְהוָה שֹׁפֵטנוּ יְהוָה מִתְקַנְנוּ יְהוָה מֶלֶכְנוּ הוּא יִשְׁעֵנוּ

^l 1 Sam. viii.

^m 1 Sam. viii. 5.

all the nations; and it is saidⁿ, the thing displeased Samuel, and God said to him, they have not rejected thee, butt they have rejected me, that I should not reign over them. Then he tells the people^o, from God, the manner of the king that should reign, and how he should tyrannise over them; and concludes, ^pye shall cry out in that day, bicause of your king which ye shall have chosen you; and the Lord will not hear you in that day. Nevertheles the people persisting in their desire to have a king, that they might be like all the nations, Samuel againe assembles them, and tells them^q. You have this day cast away your God, who himselfe saved you out of all your adversities, and your tribulations; and ye have said unto him, nay, butt sett a king over us. And thus was their king instituted, as the prophet notes^r: I gave thee a king in mine anger. And when by desiring a king, a people shall be said to reject God from reigning over them; and God is said to give a king to a people in his anger, as heere was done: they conclude from hence, that the government by kings is contrary to the mind and word of God, and an effect of his anger; and therefore not to be admitted.

In answer to this objection, I shall first consider the perticular passages uppon which the same is grounded; and then how they are applicable to our question; and lastly shew, that the government by kings is according to the mind and word of God, appearing in diverse promises and precepts in the holy scripture, relating to kings and their government. The elders of Israel say to Samuel, ^sthou art old, and thy sons walke not in thy wayes; now therefore make us a king. Because Samuel was old, and of great experience in the affayres of Israel, was he therefore unfitt for government? or bi-

ⁿ 1 Sam. viii. 6. ^o Ver. 11, 12, 13, 14, 15, 16, 17. ^p Ver. 18.

^q 1 Sam. x. 19.

^r Hos. xiii. 11.

^s 1 Sam. viii. 4, 5.

cause the sons were corrupt, was the father therefore to be deposed? Especially such a governor as Samuel was, appointed and inabled by God for that service; and who challenged all the people, * if they could, to wittnes against him before the Lord, whose oxen have I taken; or whom have I defrauded, or oppressed; or of whose hand have I received a bribe, and I will restore it; yett this able, upright governor must be laid aside, for a king like the nations. And bicause God was displeased with this action of theirs, doth it therefore follow, thatt all government by kings is likewise displeasing to him?

Schiccardus^b citeth some rabbins, with whom later authors doe agree, that the people of Israel did not sin against God in desiring of a king; butt in desiring of a king in the life-time of Samuel, whom God had sett over them. And the rabbins theruppon make this expostulation. If (say they) the people had come to Samuel, and had said to him, thou art grown old, and thy sons walk not in thy wayes, butt are evill men: we desire that thou maist governe us during thy life; butt after thy death, we would have a king to reign over us as God hath directed in his word, and in such a manner as therein is praescribed: they had not then displeased God. Butt they desired a king after the manner of the nations, whose kings were arbitrary, and tyrannous, and idolatrous: and heerin (say they) the Israelites offended God.

The psalmist observes. * The kings of the earth sett themselves, and the rulers take counsel against the Lord, and against his anointed; saying, lett us break their bonds in sunder, &c. The word in the originall for bonds, signifies imposing of lawes according to

* 1 Sam. xii. 3. * Jus reg. Hebraeor. cap. elect. R. Kimchi, R. Maimon. &c. * Ps. ii. 3.

the will of the heathen kings, as they did among their people. And stories manifest, that they were such kings; and such a king the Israelites desired. But it doth not theruppon follow, that therefore all government by kings is displeasing to God: no more than that all manner of pitty and mercy is condemned, bicause God was displeased with Saul^{*} for sparing Agag, and the best of the cattle of the Amalekites, when God had commanded him to smite them.

The sum of the argument for this objection is, that the Israelites desired to depose good Samuel, and in his roome to have tyrannous and idolatrous kings; wherwith God was displeased: therefore with kings according to goode lawes, and with powers so limited as is best both for king and people, God is displeased likewise. Bicause for the sin of the Israelites, God gave them such kings in his anger: therefore good kings are given to all people in Gods anger also. Which argument will not sway much, in the judgment of indifferent persons.

That the government by kings is not contrary to the mind and word of God, appears by the many promises in scripture, relating to them.

When God made his covenant with Abraham^γ, he promiseth him amongst other blessings, I will make thee exceeding fruitfull, and I will make nations of thee, and kings^z shall come out of thee. If kings were contrary to the mind and word of God; he would not by this word, have made it part of this great promise and blessing, that kings should come from his servant Abraham. Answerable heer-

^{*} 1 Sam. xv. 9.

^γ Gen. xvii. 6.

^z וְנָלְכִים מִמֶּנִּי יֵצְאוּ

unto, and part of the same promise and blessing, God further saith to Abraham; as for Sarai thy wife, ^a Sarah shall her name be, which in the hebrew signifies a princeſſe. According to which God saith, I will bleſſe her, and ſhee ſhall be a mother of nations, and ^b kings of people ſhall be of her. And ſurely this promise and bleſſing (in all the parts wherof is a ſtrange conſent and harmony) that kings of ſuch multitudes, ſhould be of his beloved ſervants; would not have bin made by the word of God, if the governement by kings had bin contrary to the mind and word of God. Another promise ^c is among the bleſſings which Jacob gives unto his children, that to Judah is, ‡ the ſcepter ſhall not depart from Judah, till Shilo come: that is, the kingly office ſhall not depart from Judah, untill Shilo, that is untill the Meſſiah come. That by the ſcepter is meant the kingly office, I ſuppoſe will not be doubted. And ſo it was among the antienteſt of the heathen, as appears in Homer, of Agamemnon, and in other greek authors. The caduceus was of ſnakes, and a ſcepter, as Fulgentius underſtands it. Jupiter, Saturne, and their other gods did all beare the ſcepter, as a ſigne of their ſoveraignty.

Butt we have a better authority for it as a word denoting a king. The word heer uſed by Jacob for a ſcepter ^d, is by the rabins and others interpreted a king; and rendred in greeke ^e, a chief governor or king. And in the prophecy of Amos ^f, the word that ſignifies one that holdeth a ſcepter, is uſed abſolutely for a king; and of this the holy ſtory of Eſther hath alſo divers inſtances. But it is ſufficiently clear, that the word ſcepter denotes a king: and Jacob's prophecy and bleſſing uppon the houſe of his ſon Judah, that kings for ſo long together ſhould be of his family, would not have bin dictated by the ſpirit of God, if kings had bin contrary to his word.

^a שרה^b מלכי עמים כימנה והיו Gen. xvii. 16.^c Gen. xlix. 10.

‡ לא יסור שבט מיהודה

^d שבט^e ἀρχαῖος ἐπὶ τοῦ λαοῦ.^f Amos i.

Another

Another promise is that of the prophet^s, very patheticall. And kings shall be thy nursing fathers, and their queens thy nursing mothers. The note upon this is, that kings shall be converted to the gospel, and bestow their power and authority for the preservation of the church. Agreeable heerunto is that of the psalmist^b. The kings of Tarshish and of the isles (which may more particularly relate to us) shall bring presents; the kings of Sheba, and Seba shall bring guifts; yea all kings shall worship him. The hebrew word † comes from the rootⁱ which signifies one nourished up in faith and trueth: and if kings doe, as they ought, so nourish their people; I suppose that none would be offended att kings. The prophet pronounceth it as a promised blessing to the church of God, that there should be such kings and queens, for the comfort and nourishment of Gods people. Which promise doubtles, would not have bin made by the word of our heavenly father, if kings had bin contrary to his word.

The same prophet^k saith, in another place. The gentiles shall come to thy light, and kings to the brightnes of thy rising. The hebrew word^l heere used for, shall come; is from the root which signifies, || to walke continually, as kings and all people ought to doe, in the light of the word and gospel of Christ. Paralell and strangely answering to that place of Isaiah, is the text in the Revelation^m. And the nations of them that are saved, shall walke in the light of it: and the kings of the earth doe bring their honor and glory unto it. The place unto which the kings shall bring their honor and glory, is exprest in the same chapterⁿ. I John saw

^s Isa. xlix. 23. וְהָיוּ מְלָכִים אֲמִנִּיךָ וְשָׂרֵי־מַלְכוּתְךָ
^b Psal. lxxii. 10, 11.

† אָמֵןⁱ אָמֵןⁱ * Isa. lx. 3. וְהָלְכוּ || הָלַךְ

^m Rev. xxi. 24 καὶ περιπατήσασιν τὰ ἔθνη διὰ τῆς φῶτος αὐτῆς. καὶ οἱ βασιλεῖς τῆς γῆς φέρεσιν τὴν δόξαν καὶ τὴν τιμὴν αὐτῶν εἰς αὐτήν.
ⁿ Rev. xxi. 2.

the holy citty, new Jerufalem. And he faith, ° that the angel ſhewed him that great citty, the holy Jerufalem that is interpreted the church of Chriſt, and the immaculate lamb of God the light of it. To which new Jerufalem it is heer ſaid, that the kings of the earth ſhall bring their honor and glory, and ſhall make glad the citty of God. As the prophecy of Balaam is, ſpeaking of Iſrael. ¶ The Lord his God is with him, and the ſhout of a king is among them. The original is, a great noiſe of joy and gladnes bicauſe of a king: which would not have bin pronounced by the word, if kings had bin contrary to it.

By the way we may obſerve, and admire the wonderfull harmony and conſent of the old and new teſtament, even to the ſame words: as in theſe of Iſaiah, and the Revelation, and in many other places of the holy ſcripture.

In this comfortable praediſtion (certainly to come to paſſe) of the laſt and moſt glorious ſtate of the church of Chriſt, relating to the new Jerufalem; kings as well as others have the promiſe, to be citti-zens of that city; and therefore ſurely, not contrary to that word which ſpeakes it.

Another promiſe is recorded by the wiſe man ¶. The king that faithfully judgeth the poore, his throne ſhall be eſtabliſhed for ever. Which would not be, if ſuch thrones were contrary to the word of God.

I ſhall now mention ſome praecepts in ſcripture, relating unto kings; wherby the word teacheth the duty of kings to their ſub-jects, and of ſubjects to their kings; which would not have bin, if

° Rev. xxi. 10.

¶ Num. xxiii. 21.

¶ Pro. xxix. 14.

kings had bin contrary to that word which gives the rules. Moses setteth down rules both for king and people^r. When thou shalt say I will sett a king over me, &c. ^s thou shalt in any wise sett him king over thee, whom the Lord thy God shall chuse; one from among thy brethren, &c. not a stranger. ^t But he shall not multiply horses to himselfe, nor cause the people to return to Aegipt. ^u Neither shall he multiply wives to himselfe, that his heart turne not away: neither shall he greatly multiply to himselfe silver and gold. ^w And he shall write him a copy of this law in a booke. ^x And it shall be with him, and he shall read therein all the dayes of his life; that he may learn to feare the Lord his God, to keep all the words of this law, and these statutes to doe them. ^y That his heart be not lifted up above his brethren, &c. Heere (as the rabbins and some others hold) is a positive praecept, that people ought to have kings by all means; ^z thou shalt place a king over thee. Heer are cleerly praecepts negative and affirmative, both for king and people; how the people shall choose their king, and how the king shall rule over the people, and how he shall governe himselfe. And surely the word of God, had not sett down these praecepts in vaine, or if kings had bin against that word: nor have directed the choice of an officer, of a king, if the kingly office had bin unlawfull.

The last verse of this chapter, pronounceth a blessing to kings obeying this praecept^a. That he may prolong his dayes in his kingdom, he and his children in the middest of Israel.

Another praecept for the duety of a king, is that unto Joshua the successor of Moses, who was also a king or monark in Israel; where:

^r Deut. xvii. 14, &c.

^s Ver. 15.

^t Ver. 16.

^u Ver. 17.

^w Ver. 18.

^x Ver. 19.

^y Ver. 20.

^z Ver. 15. Ponendo pones

super te regem.

^a למען יאריך ימים על ממלכתו הוא ובניו בקרב ישראל

the Lord commaundeth him. ^b Only be thou strong, and very courageous; that thou maist observe to doe according to all the law which Moses my servant commaunded thee. Turne not from it, to the right hand nor to the left; that thou maist prosper, whither soever thou goest. This booke of the law shall not depart out of thy mouth, butt thou shalt meditate therein day and night; that thou maist observe to doe according to all that is written therein. For then shalt thou make thy way prosperous, and then thou shalt have good successe.

Heer is the same praecept as to the booke of the law, and the like blessing to the observation of it, as in Deuteronomy xvii. And it is good for all kings and rulers to remember, and constantly to practise it.

The wise man, by the spirit of God, declares this praecept to the people. ^c My son feare thou the Lord, and the king. And according to this, it is the admonition of the apostle ^d to all people. ^e Feare God, honour the king. Next to that great precept, feare God, is joyned this precept also, honour the king; which duty would not have bin injoyned in an evill thing.

The same apostle ^f in the same epistle, delivers this precept. Submit yourselves to every ordinance of man for the Lords sake: whether it be to the king as supream, or unto governors as unto them that are sent by him, for the punishment of evill doers, and for the praise of them that doe well: for so is the will of God.

The apostle, we may believe, would not have exhorted obedience unto kings, described their duty to be ordeined for a punishment to

^b Jos. i. 7, 8.

^c Pro. xxiv. 21. ירא את יהוה בני ומלך

^d 1 Pet. ii. 17.

^e Τὸν Θεὸν φοβεῖσθε· Τὸν βασιλέα τιμᾶτε.

^f 1 Pet. ii. 13, 14.

evill doers, and for the praise of them that doe well (which none will doubt butt to be pleasing unto God,) if the governement by kings had bin displeasing to him.

This is explained by his fellow apostle. ^a Lett every soul be subject to the higher powers, for there is no power butt of God; the powers that be are ordeined of God. Whosoever therfore resisteth the power, resisteth the ordinance of God: and they that resist, shall receive to themselves damnation. Surely none will deny kings to be comprehended in these powers; and consequently to be the ordinance of God, which cannot be unlawfull but must be obeyed, and not resisted by any of what judgment soever they be, and that under the highest penalty, even of damnation. Consonant heerunto is the advice of the wise man. ^b I counsel thee to keep the king's commaundement; and that in regard of the oath of God. A most strict obligation to obey kings, and assertion of their authority to be from God.

King Solomon, speaking of Christ under the name of wisdom, saith: ⁱ by me kings reign, and princes decree justice. The latin versions render it, ^k in me kings reign, and princes, &c. the vulgar translation is, ^l by me kings reign, &c. the syriack version saith, ^m for me kings reign; and in the 16th verse, by me princes rule, even all the judges of the earth. The hebrew affixe ⁿ doth warrant all these versions; and if it be read, by me, in me, or for me kings reign, it testifies the reigning of kings to be an ordinance of God: and if so, it includes a praecept of obedience to them, as it doth unto princes, nobles, judges, and rulers, whom none (I suppose in their

^a Rom. xiii. 1, 2.

^b Eccles. viii. 2.

ⁱ Pro. viii. 14.

בִּי מַלְכִּים יִמְלְכוּ וְרוֹגִים יִחוּקֻּ יִרְק

^k In me reges, &c.

^l Per me reges, &c.

^m Propter me reges, &c.

בִּי

witts) will deny to be also of God's ordinance; and with them, kings by name are heere reckoned, as by the same institution of God.

I shall conclude this praeceptive part, with that of St. Paul to Timothy. °I exhort therefore, that first of all supplications, prayers, intercessions, and giving of thanks, be made for all men, for kings, and all that are in authority; that we might lead a quiet and peaceable life, in all godlines and honesty: for this is good, and acceptable in the sight of God our saviour^p, who would have all men to be saved, and to come to the knowledge of the truth. Heere we have an expresse praecept of the holy apostle, to pray, and to give thanks for kings: butt surely he would not have exhorted it, if kings had bin unlawfull. Butt this is not devoutly to be imagined of Christ's apostle; nor that the fruits of an evill thing should be, to lead a peaceable life in all godlines and honesty: butt he telles us so, and that this is the trueth of God.

Butt by this discourse, my intention is not to condemne any other names or formes of government, of antient and constant choice, and approbation with other nations. Every nation hath its own lawes, and customes. Yett I may say, that I have not observed any change of names or forme of government, which hath not proved highly perilous, if not fatall, to the liberty of the countrey where it hath bin made. To lett passe our own later storyes, in which particular I was no actor, but many miles distant: I shall only remember that passage of the Romans, who after Tarquin, would have no more the name and title of king amongst them: butt the same and greater power was exercised by their new titled officers. After their civill warre, Tacitus^q observes (which was not farre

° 1 Tim. ii. 1, 2, 3.

^p Ver. 4.

quam vetera et periculosa mallent.

^q Annal. p. 1. Tuta et frequentia,

estranged from our case,) that people “ were apt to entertain present things, with their safety; rather than antient, and dangerous.”——“ That all things being wearied with the civil war, Augustus Cæsar took upon him the government under the name of prince.” They would not allow him the title of king; but, of “ prince of the senate;” and to exercise far greater power over them, than ever any king had done^r.

The like opposition had been made to this name, and title, in the time of his uncle, Julius Cæsar^s, whom they would not stile king, but “ perpetual dictator, generall of the army,” and the like; and afterward, “ generall” only. And when one saluted him by the name of king; his modest answer was. “ I am not king; but Cæsar^t.” But these matters at length came to that pass; that “ the will of Cæsar,” (as the civilians hold,) was taken for law^u.”

^r It is proper to apprise the reader, that the text is varied a little, in this and the following paragraph, from the author’s manuscript. His proposition therein seems to be, that “ any change of names, or forme of government, (in his own words) hath generally proved dangerous, if not fatal to the liberty of the country where it hath been made.” This he proves by the example of Rome: and seems to allude to the troubles, in his own time, in England. The general reasoning is taken, probably, from Mr. Selden, where he treats of the introduction of the title of emperor, (Titles of Honour, part 1. c. 2. § 1, 2. edit. 1726): but not without consulting the originals; for our author reads “ plebeius,” “ one,” in Suetonius, where Mr. Selden reads “ plebs,” “ the multitude.”

All the variation made by the editor is in restoring to Julius, and Augustus Cæsar, respectively, such particulars as the author’s transcript was found to have misplaced. (M)
——Cuncta discordiis civilibus fessa, nomine principis sub imperium cepit——princeps senatûs.
^s Regem Romæ posthac nec dii, nec homines, esse patientur. Cicero, de divinat. l. 2. See Mr. Selden, as above. (M)
^t Perpetuus dictator, imperator exercitus, imperator.——Non sum rex, sed Cæsar.
^u Voluntas Cæsaris pro lege habebatur.

And thus, from their new title, was introduced perpetuall servitude.

Where the title and authority of king, is so interwoven and incorporated with the lawes and customes, as it is in England; with the practise and approbation of so many hundreds of years, as it hath bin with us; it is impossible to be altered without the highest daunger of confusion, both to king and state. This caused our wise auncestors, after the english lawes were established in Ireland by Poyning's law, to give the same title of king as was in England. And this caused the Swedes not to permit Eric the first, to continue the government under the title of marshall; butt by their ricksdagh, enacted him to have the title of king of Sweden.

Certainly the title and authority of kings, and monarchicall government, is most antient and univerfall in all countryes.

England, Scotland, and Ireland, had their kings, as early as any others^w, in this part of the world. And although the learned knight Sir Robert Cotton^x faith, that to seeke for the antiquity of any kingdom before the decay of the roman empire, is meere vanity; and that Vortigerne, a native of this isle, first established heere a free kingdome, 450 years after Christ, and so left it to the Saxons: yett it may well be supposed, that he means this only in relation to the roman conquest; not to the generall stories, which sufficiently testify kings to be of much higher antiquity in most nations. And if those of our own may be credited, Brute is recorded, with the people whom he governed, to have settled in this island, called from him Britain: and at their first growing up into a body and common-

^w Galfr. Mon.

Camb. Britannia, &c.

^x Posthum. p. 76.

wealth, Brute was their king: and a continued succession of kings from him to our dayes, is mentioned in our stories.

Rome had its kings, from the first foundation of the citty. And before the eagle spread her wings in Germany, they had their severall kings.

^y France, Spaine, and Italy, had severall kings of perticular parts of them, as antient as their states: butt in Spaine, after those ^z in England and France.

The Swedes derive their name from Suevus, the son of Magog nephew of Noah, in the year of the world 1787; and that he was (as he might well be) the first of their kings. And with them, the Goths, Vandales, Danes, and other inhabitants of those parts, deduce their race of kings from great antiquity.

It is affirmed^a, that every where in Greece, in the most antient times, their states were monarchicall, and not popular. And when their senates, or their democracy or optimacies, were in greatest power; yett then also they had their kings.

Moses was also appointed by God to be king of Israel, as hath bin remembred; to conduct them out of Aegipt to the promised land; when they first began to come to a settlement, and body of a commonwealth.

The children of Heth called Abraham^b a mighty prince. And so his warre with Chedorlaomer declares him to be, who is stiled

^y Gothofredus.

^z Cöttoni posthum.

^a Pausanias in Boeoticis.

Βασιλεῖαι γὰρ πανταχὲ τῆς Ἑλλάδος καὶ οὐ δημοκρατίαι, πόλαι καθεσθίκεσαν. (M)

^b Gen. xxiii. 6.

^e king of Elam: and divers other kings are mentioned in that chapter.

Nimrod is the first king mentioned in the bookes of Moses: and this by the antients is placed in the age of Abraham, about 340 years after the flood. And that Nimrod was a king, is warranted by the text ^d, speaking of him, that the beginning of his kingdome was Babel &c. In the division of the earth ^e among the posterity of Noah, the heads of families tooke their severall parts, according to their language and families: and they who are named there, and in Gen. xxxvi. were the kings or supream princes of the nations, of which they were authors. And so the words ^f of Moses beare; and such a one Nimrod was. And that division, as it had relation to the more easterne and southerne parts in Sem and Cham, where kings are of greatest antiquity: so also the parts of Japhet and his posterity, as Gomer, Magog, Madai, and the rest in their kingdomes, are in antient testimonies ^g of the greeke church, extended by expresse words, from the northerne parts of Asia into the island of Britaine; for so they interpret Moses words ^h, the isles of the nations were divided by them. Some doe hold, that about Serug's dayes, who was borne about 170 years ⁱ after the flood, men arrogating to themselves power over each other, made themselves emperors and kings; which is before the time of Nimrod. And Sem is said to succeed as king, to his father Noah: and this title of king in Sem, is noted ^k to be in expresse words in the holy story; if att least, according to the most received tradition, Sem and Melchisedeck were the same person; for he is named ^l king of Salem.

^e Gen. xiv. 1.

^d Gen. x. 10.

^e Gen. x.

^f אֱלֹפִים מַלְכִים

^g Eusebius. Cedren. Chron. Alexandr.

^h Gen. x. 5.

ⁱ Cedren.

^k Seld. Tit. hon. pt. i. p. 7.

^l Gen. xiv. 18.

The greeke monkes^m divide the time before the flood, into the timeⁿ wherein no kings were, which they account 460 years after the creation; and^o the time which had kings, reckoned by them about 1200 years to the flood, in which time were ten kings; the first of whom (say they^p) Alorus was a man designed by God himselfe, to be^q the shepheard of the people. Concerning the sari of years, and the ridiculous number of the reigne of one king computed to 10800 years; it is, by our before cited author^r, explained and reconciled; and the computation of dayes for years, in that time and with that people, shewed.

According to that of the greek monkes: among the Chaldaean; out of Berofus and Cedren, are reckoned ten kings, before the flood; of whom, Xifuther was the tenth, and he esteemed to be Noah. Butt to this of the chaldaean kings, an objection is made; that the holy story of Moses, justifies it not. To which is answered, that uppon a like reason we might deny, that ever Enoch made any prophecy, although St. Jude^s cites it. Butt as that of Enoch, is supposed to have bin as a tradition^t conveyed through them who were saved in the arke: so might this of the chaldaean kings be preserved, and from the same persons be delivered to such as might afterwards commit it to writing. Which were not at all difficult to conceive, if Xifuther the last of them, were, as Cedren tells us, no other than Noah himselfe.

Neither are the aegiptian histories without fetching a race of kings among them, in the time also before the flood.

^m Panodorus. Arianus.

ⁿ Χρόνος ἀβασίλευτος.

^o Χρόνος βασίλευτος.

^p Geo. Syncellus apud Scalig. in not. Euseb. p. 246.

^q τῷ λαῷ ποιμήν.

^r Titles of honor, part i. p. 5.

^s Jude, 14.

^t Tertullian de cultu mul-

liebri, c. iii. et al.

Butt Cedren^u goes as high as may be, even to Adam himselfe, whome he calls the first king; and saith, that he governed or commanded all mankind, as long as he lived. And^w Seth succeeded him in that empire; and Konan the son of Enoch, grandchild to Seth, was king or emperor over all the world. Agreeable with this, is the opinion of those who derive monarchicall government from the law of nature; and hold, that from the frame of nature itselfe, man as a civill creature, was directed to this forme of subjection^x. In the beginning, the government of things and of nations, was by kings. And the excellent philosopher Hermes Trismegistus^y telles us of the angells, and the supream heavens being immediately governed by the first maker of all things; of the planets, and other starres being ruled by the sun; and of separated souls, and the aire being subject to the moone. It is added, that uppon earth, kings are in like sort governors; as if naturall reason had first ordeined them on earth, by an unavoidable imitation of the creator's providence, in that institution of a monarchy in the aire, starres and heavens.

^u Οὗτος ἡγεμόνευσε τοῦ γένους τῶν ἀνθρώπων, δι' ὅλης αὐτῆς τῆς ζωῆς. ^w Joseph Ben Gorion. l. ii. c. 11. et rabbi Abr. Zacuthius, in Juchasin, fol. 6. b. et rabbi David. in Tzemach. fol. 2. b. part ii. ^x Justin. Seneca. Principium rerum gentiumque imperium, penes reges erat. ^y In Κόρη τῆς κόσμου.

Defender of the faith, &c.

WE find antiently in the church, to be ordeined certain ^a advocates of causes, who were called, defenders of the church, as appears by a canon ^b of the councell of Carthage; and by the law of the emperor Charles ^c, who constitutes ^d defenders of the churches, against the powers of secular, and rich men; and another law ^e appointing defenders of the causes of the church, and servants of God. From these defenders of the church, who were also called † advocates and patrons, came our law word advowson; and the right of patronage in these defenders of the church, to present clerkes, to ecclesiastical benefices.

The same learned knight, in his epistle to the king before his booke of councells, remembers the title of God's vicar, given by pope Eleutherius ^f, to Lucius, our first brittish king: which is also mentioned in severall other authors ^g of our lawe bookes, as a title proper for our kings, and frequently given to them. The Saxon word for it, is, God's delegate, or vicar of Christ ^h. And the same title of Christ's vicar ‡, was afterwards taken by king Edgar, in his charter to the monastery of Winchester.

^a Spelmanni glossarium, tit. Advocatus.

^b Canon. xcix. synod. Carthag.

^c Capitul. Carol. l. v. can. 31.

^d Defensores ecclesiarum.

^e Lib. vii.

can. 308.

† Advocati causarum ecclesiae.

^f Epist. Eleutherii papae.

LL. Edw. confessor. c. 17.

^g Sir Jo. Davys, in rep. f. 88. b. Bracton,

l. i. c. 8. § 5. et l. ii. c. 24. § 2.

^h Chnister Spelgenb, Saxon lawes, c. 5.

‡ Notes on Eadmerus, f. 155. a. "Consult the same author (Selden) concerning
" the affair of *patronage*, &c. in the beginning of the said Notes; p. 1608, of the se-
" cond vol. of his works, the edition of 1726." (M) 5 Rep. f. 10.

Butt to come a little lower ; in a writ of our king R. 2¹, is this expreffion. We are, and will be defenders of the catholicke faith : the very words in the present title.

We find also in our records of parliament^k, the title given to Humphrey duke of Gloucester, of defender of England.

Butt to come to the present title of defender of the faith, in our kings ; it arose uppon this occasion. The romanists and lutherans in Germany, having some contests uppon the pardons, and indulgences graunted by the pope ; against the which, divers in Germany, and principally Luther, did preach, write and dispute, in opposition to the pope's authority, and these bulls. King H. 8. to ingratiate himselfe the more with his holines, and to gaine his favour, when he should have occasion to use it ; did write a volume against Luther, in defence of pardons, the papacy, and the seaven sacraments ; and sent it to pope Leo the tenth, to Rome, where the original^l is yett extant in the Vatican. For this most acceptable service, and high desert, a defence of the faith and power of the see of Rome, and that by a kingly pen : it was thought fit by the pope and his cardinals^m, by a golden bull anno 1521, to conferre uppon H. 8. this title of defender of the faith ; and it commaunds all christians, that in their directions to him, they should after the word king, adde this, " defender of the faith. The bull itselfe is to be seen, in that rare treasury of pretious collections and monuments,

¹ Breve R. 2. in regist. Eliens. anno 1384. Fidei catholicae defensores sumus, et esse volumus.

^k Rot. Parl. 3 H. 6. Affidatio dominorum.

^l Francisc.

Swert. in Delic. orb. Christ.

^m Sum. constit. pontif. Petr. Mathaei, in Leon.

X. constitut. xii. p. 227. Speed's hist. H. 8. &c.

ⁿ Defensor fidei.

the library of my noble friend, Sir Thomas Cotton†; and the transcript of it in severall printed authors, and historians.

Sleidan speaking of this passage, saith, that the pope gave unto the king an honourable name°, calling him defender of the church. Butt that title more properly belongs unto the emperor, who is stiled, ° defender of the church, and ° advocate of the church. And it is a part of his oath att his last and most solemne coronation, which is done by the pope in person; when he swears to be a perpetual defender of the pontifical dignity, and of the church of Rome. And the like was also the solemne oath of the more antient emperours.

° Some of the old kings of Sicily, used titles in their stile, somewhat like to these; as ° helper, and buckler of the christians; and helper, and defender of the christians.

King H. 8. did not long continue his reverence to the pope's authority. Butt failing in his expectation from him, touching the matter of his desired divorce from his wife queen Catherine; king Henry theruppon changed his judgement concerning the pope's supremacy; and by ° act of parlement, assumed to his crowne the supremacy in all causes, ecclesiasticall as well as temporall; and wholly abolished the pope's power and supremacy in England, enough contrary to the faith of that church. Nevertheless, he still kept his title of defender of the faith; and further added to it by that act of parlement, the high titles of supreame head of the church of

† Now at the british Museum. (M)

° Defensorem appellans ecclesiae.

° Defensor ecclesiae.

° Advocatus ecclesiae.

° Scip. Mazel. descrit.

de Napoli, p. 471.

° Christianorum adjutor, clypeus et defensor.

° Stat. 26. H. 8. c. i.

England; and left these titles to his son king E. 6. who not only pursued his father's steps as to the supremacy of the church of Rome, but as to their doctrine likewise in many points; and began that blessed reformation, wherof posterity enjoys the benefit^a. Notwithstanding this difference in faith, yett it was thought fitt for the young king, still to continue that title of defender of the faith, and of supreme head of the church; which descended to his sister queen Mary. Who although she reconciled her kingdoms to the church of Rome, yett she continued not only the title of defender of the faith; but likewise for some time, that other title of supreme head of the church, which she afterwards left off; and so did her successors.

Her sister queen Elizabeth prosecuted our happy reformation; and wholly abolished the popish power and faith, in her dominions. Yett continued she, and most deservedly, the title of defender of the faith, which she was effectually, in England, Scotland, and Ireland; and further, in Germany, France, and the Netherlands, as their stories witness.

King James succeeded her, in the pious exercise of this title of defender of the true faith: so did his son king Charles the first, of blessed memory: so doth our present Charles the second. Though all of them since queen Mary, have discontinued that other title of supreme head of the church on earth, as H. 8. used it. And in the first year of queen Mary, when the writs of summons to the parliament, had not that stile of supreme head of the church; a

^a Engravings of the medals struck by Hen. VIII. and Edw. VI. upon this occasion, may be seen in the collection now publishing by Mr. Francis Perry. The originals being, the first in gold, in the british Museum; and the latter gilt, in the possession of my honoured friend Thomas Hollis, Esq; (M) ^w 1 Mariae, Dyer. f. 98. a.

question was made, whether those writs without that title were legal, or not: and upon deliberation it was resolved, that those writs were legall, notwithstanding that title was omitted; and that the act which gave that stile, was to be construed only affirmatively; without any negative inference, that the stile should not be good without it. Thus, notwithstanding the severall changes of religion and perswasion of faith, yett still the title of defender of the faith was continued. And there can be butt one true faith, which will never be extinguished; though by difference of opinion (wherof we see too much in our time) it may be obscured. Nor do some believe the way to heale our breaches, will be by too much rigor, or imposing; * butt according to that clemency and tendernes of his Majestye's gracious proclamation touching those matters, will be the best means to defend, and increase the true faith of Christ among us.

* The following seems to be the true reading, viz. " but that clemency and tendernes, according to his majesty's gracious proclamation" &c. (M)

^a To the sheriffe.

THIS officer sheriffe, is in latin stiled vicecomes, properly (saith Spelman ^b) a fiscal judge, he that hath care and charge of the revenues; translated, the ^cdeputy of the earle, and governor of the shire or countey. The saxons called him ^dgrave, and we call him reve. The word signifies to take, to force away from one, to exact: theruppon it is said, ^eif any one invite † a reve, to take from another his goods unjustly &c. ^fand if any one stay a reve, that is a fiscall judge &c. And such an officer was often called the king's ^gexactor. Wheruppon it is said, ^hwith much labour, and pleading I freed myselfe from the oppression of the king's exactors, whom they call reeves: and divers other instances are of the like interpretation.

ⁱ Lambard gives the word a more honorable derivation, from the faxon word which signifies to governe. And indeed this officer hath both the charge of collecting the king's revenue, and is a governor or judge within his countey. He was an officer under the earle, or more properly instead of the earle. The Wisi-goths called him vicarius; and the Normans vice comes. We stile him sheriffe, that is reve of the shire; schireve, and shiregereve antiently called; and ^khigh reve, chiefe greve or ruler of the countey.

^a Vice comiti. ^b Glossarium verbo Grafio, Judex fiscalis. ^c Comitibus vicarius.

^d гевѣра гревѣра

^e LL. Salic. tit. 33. Si quis grafionem &c

† The original word, as quoted by Sir H. Spelman, is *invitaverit*; and therefore I have presumed, that the word *imitate*, read in this place, in Mr. Whitelocke's manuscript, is a slip of the pen. (M)

^f Leg. Ripuar. tit. 51. Si quis judicem fiscalem quem grafionem appellant &c.

^g Æthelwerdus, l. iii. anno 787.

^h Sugerius

de possess. Beati Dionysii, —“ Ab oppressione exactorum regionum quos dicunt grafiones.

ⁱ Lambard Saxon words, гевѣра à гевѣccan.

^k hihgevepa

In the lawes of St. Edward¹, a reve or greve is thus described. Greve is a name of power, and in latin signifies a chiefe commaund, and is as much as to say, dominus, lord ; and is compounded of the english words^m, which signify, peace, and misery : an officer to keep the peace, and to punish, and bring misery on those who breake it. Antiently they were called ⁿaldermen, that is elders.

My lord Coke^o agrees this etimology of the word sheriffe, from the faxon word scire, that is a countey, and reve, that is a keeper or gardein of the shire ; and sometime they were called ^pshireman, or eldeman of the shire. And to this day the sheriff's patent is, we commit to you the ^qcustody of the countey.

^rShirereeve, and shiregereve, shrive, and sheriffe are all the same thing. It is also agreed, that this officer was long before the time of William the first^s, as is testified by divers of our antiquaries. What was sherife, or shrive, or schiregreve (saith Selden) butt alderman.

Ingulphus^t speaking of king Alfred's division of England into shires, hundreds &c. saith, that he divided the governors of provinces, which before were called vicedomini, into two offices : that is judges, whom we now call justices ; and into vicecomites, sheriffs, who still reteine that name. Butt (saith Sir Roger Owen^u) you must understand Ingulphus, that Alfred did more perfectly, or abso-

¹ C. xxxv. nomen potestatis. (quaere cap. ii.)

^o Epist. 9. rep.

^r Tit. hon. 2 part. p. 610. (2d. edit. M.)

Sir Roger Owen MS.

^u MS. 1. part, f. 339. Co. epist. 9. rep.

^m gnið, and vze.

ⁿ Ealdermen.

^q Custodiam comitatûs.

^s Spelman, Co. ep. 9. rep.

^t Hist. f. 495. Malmesb. l. ii. de gest. reg. c. iv.

lutely reduce those countreyes into shires, than they were before. And the antiquity of sherifs is evinced by all the charters of the monasteries and bishopricks, founded afore the conquest, inhibiting the sheriffe to meddle within the ecclesiastical fee: and in Domesday, almost in every other lease, there is perticular mention of the sheriffs that held land^w; in the confessor's time. In the MS. of Rivalensis is remembred, what care Alfred tooke, that the poore men of each countey should not be oppressed by the sherife and his ministers. In the MS. of Peterburgh, to one of the deeds of the confessor is subscribed, I Moulsea vicecomes. And in the charter of Withasius king of Mercia, anno 833, is mention of the vicecomes. So in the letters patents of king Kenulphe of Mercia, is named Theraldus sherife of Lincolnshire. Likewise in the letters patents of king Edgar, anno 972, restoring Medhamsted, is a clause, that the earle or sherife shall not intermeddle there. In a subscription to king Edred's charter to the abbey of Crowland, dated 948, is, ^x I Bingulph, vice dominus; ^y I Alfer, vicecomes: and there certain lands are discharged^z of the ayds of sherifs, by that name; and a precept vice domino Lincolne, and to other our ministers in those parts, to make a perambulation of the isle of Crowland. Very many of the like instances might be collected, proving sherifs by the name of vicecomites, to have bin in use with us, long before the time of W. I.; notwithstanding Polidor Virgil's opinion^a, that they were first introduced by him. Butt it is no strange thing for that italian gentleman, to mistake in matters of law, and antiquity, touching England.

^w Terra vicecomitis.

^x Ego Bingulph vicedominus consului.

^y Ego Alfer vicecomes audivi &c.

^z Ab auxiliis vicecomitum.

^a F. 151.

Sir Roger Owen affirmes, that forein countryes have also the office of our sherife, vicecomes, in some manner answerable to his place in England. In the governement of Flaunders^b, is mention of vicecomes, as a middle judicatory: also of vicecomites in Italy^c. And in Germany there is mention of a patent, dated 1224^d, whereby a countey is given to the church; and a prohibition, that^e the sherife shall not intermeddle in the countey. The landts grave, rhin grave &c. are in effect sherifs of the province of the Rhine, and of such a land or territory. By the customary of Normandy, they had antiently sheriffs there as in England. And for Paris, at this day the vicomtrey, or countey, is the liberty of the citty. Mention is made also in their authors^f, of the sherifs of Blois. And in the edict of Frauncis the first^g, the viscounts and receivers of the king's revenues, are made especially accomptants. In some towns in France^h, the head officer is called viscount; and in Normandy, they have charge of the duke's revenue. Portugal isⁱ divided into six comercas; the governor of each of them is like our sheriffe. And so is the spanish officer^k called adalantadas. That of Hungary, in resemblance to our antient sheriffs is observable^l, that it was divided into 70 comitatus, countyes; and that two parts of the profit of all justice, came to the king's treasury, and the third part remained to the count. Which is also the right of some viscounts in Fraunce^m; and which is the same with us in England, as Gervase of Tilbury notethⁿ, describing a comes to be he who re-

^b Bucelarius.^c Grantzius metropol. 9.^d Baronius Annal. Eccles.

l. xvii.

^e Vicecomes non intromittat in comitatu.^f Carnacensis.^g Anno 1540.^h Cassanaeus.ⁱ Comestagius.^k Lucius

Morinaeus.

^l Otho Frisingens. de gest. Frederic. 1. l. i. c. 31.^m Charles l'Oyseaux de mediocr. feign. c. vii. § 19.ⁿ In Dialog. de scaccario, Qui tertiam partem et portionem.

ceiveth the third part and portion, of the profits which arise by pleas in the countey.

In domesday booke, concerning Ipswich it is recorded, that queen Edena hath two parts, and comes Gueft the third part. And of Norwich, that it payd 20 lib. to the king, and to the earle 10 lib. The like of Lewis, two parts to the king, and the third to the earle. Butt this was only where it was graunted by the king. The epistle to the 9 Report, goes further, and saith, that albeit the Saxons gave this officer the vulgar name used to this day; yett it is manifest, that the office was of antient time, before they sett any foot in England. Some resemble it to the officer of the Hebrewes^a, who was ruler of a thousand families, according to the institution of Moses by Jethroe's advice. And this ruler led his men forth to battle, and was judge of their civill controversies. So is our sheriffe att this day, commaunder of the power of the countey, and judge in his countey court; wherof occasion will be given to speak more in another place.

^a Arpenius saith, that shireeve is a name of honor in the Arabick. The word vice comes for an officary title, is frequently used by forein writers^p. And in France^q, the provost in some places, is the same officer with our sherifs.

Grotius recites the old officers of the Germans, of whom Caesar affirmes, that there was no common magistracy: butt^r the princes of

^a Exod. xviii. 21.

^p Erpenius (Thomas) probably. (M)

^q Thuanus,

l. xliii. f. 894. 900. 906. 635.

^r Pasquier Recherches, f. 604. Le provost

qu'ils appellent sheres.

^r Lib. vi. Principes regionum et pagorum inter suos jus

dicunt. The word *pagus*, in this place, seems to answer to the word hamlet, village, or *wick* literally; and thus Cæsar and Tacitus agree. (M)

regions,

regions, and *countreyes*, give judgement among their people, and decide their controversies. And Tacitus relates^v, that the lawes were administred in the countreyes, and towns: so is it by the sherifs of our countyes. And Tacitus saith, that the princes used to be elected: so were our sherifs in England. Many times the king^t to gratify the people, not only by writ, butt by parlement used to grant the election of sherifs or justices to his people. As may appeare by the statute of Articuli super chartas, and by the records in the tower. In the fixt year of king John, the men of Cornewall did choose their sherifs themselves. And by the records, 11 E. 3. the king graunted to his son the black prince, duke of Cornwall, that for ever after, the dukes of Cornwall and their heirs, should choose sherifs of Cornwall, as the king did in other countyes. And king H. 7. by his letters patents^u, graunted to Arthur his eldest son, prince of Wales, that he should choose all the sherifs within the said principality.

^w Spelman holds, that in the folkmote, which was the generall court of the countey, the sherifs were elected by the suffrage of the people, untill the 9th year of E. 2. His warrant for this opinion, is from the lawes of the confessor^x, which say, that the herotoches were chosen by the common councel, for the common profit of the kingdome, through all the provinces and countreyes, in each countey in full^y folkmote: as also sherifs of provinces and counties, ought to be elected.

^v De mor. German.

^t Sir Rog. Owen MS. part i. p. 235.

^u Just.

Dodderidge Cornwall pat. dated 5 H. 7.

^w polcmote. Glossar. verb. Folcmot,

suffragio populi electi sunt vicecomites.

^x LL. Edw. conf. c. xxxv.

^y polcmote.

This seems to contradict their opinion, who hold, that the heretoches and sherifs were the same officer. They are here distinguished; and a heretoché signifies the generall or leader of an army. Yett in the northerne countryes, they have att this day, an officer of much like power with our sherife in his praecinct; whom they call an hertocht. And in some places they call him landts-heved, that is, head of the land where his government is. Whence also is the name of landtsgrave in Germany, and the old name of ledgereve in England. And this heretocht and landtsheved, had the commaund of the forces of the province, and is judge of all their controversies: butt an appeal lyes from his judgment, to the king. So it doth from the judgements in the sheriffs courts, to the king's bench. And the sherife had antiently the power of the countey in his hands, as he hath att this day. And it is affirmed, that the noble family of the Ashburnhams in Suffex, have an instrument or writing from the conquerour, commaunding Ashburnham to come to him^z, with the power of his countey.

The election of sherifs seems to have bin in the people, till 9th E. 2^a. as hath bin noted. And then a law was made, that sherifs should be assigned by the chancellor, treasurer, barons of the exchequer, and by the justices; and such to be made, as had sufficient land within the shire. Butt this was an alteration of the former statute^b of Articuli super chartas which gives the election of sherifs to the people, which is againe^c recited in that law; "whereas the king hath graunted the election of sherifs to the commons of the shire, &c.:" butt this statute of 9th E. 2. makes the alteration. And king E. 3.^d enacts, that the sherifs shall be

^z Cum posse comitatus sui.

Articuli super chartas, c. viii.

14 E. 3. c. vii.

^c Stat. 9 E. 2. Of sherifs.

^c Articuli super chartas, c. xiii.

^b 28 E. 1.

^d Stat.

ordeined.

ordeined by the chancellor, treasurer, and chiefe baron of the exchequer; taking to them the chiefe justices, on the morrow of All Souls, att the exchequer. And Fortescue^e describes the manner of choosing them, as att this day. That the morrow after All souls, all the king's counsellors (saith he) meet in the king's exchequer, as well the lords spirituall and temporall, as all other the justices, all the barons of the exchequer, the master of the rolles, and certain other officers: where all these with one common assent, doe name of every countey, three knights or esquires, whom among other of the said countey, they take to be of good disposition and fame, and best disposed to the office of sherife, of that countey. Of the which three, the king chooseth one, whom by his letters patents he appointeth sherife of the countey for the year following; which was ordeined by the same statute^f, that no sherife should tarry in his bailiwick above one year; and the same by another statute afterwards. Though before, they^g were sometimes in fee, sometimes for life, and for many years, as appears by the statute of Articuli super chartas, and other statutes, and the bookes of our lawe: and to this day, the lord Clifford's heirs continue sherifs of the county of Westmerland in fee. The like sherifs in fee, they have to this day in Scotland^h; and the same officer by the name of schireve, as with us in England.

They were ordeined in Walesⁱ, by king E. 1. The office of high sherife is full of honor, and power^k. For honor, he hath

^e De laudib. leg. Angl. c. xxiii. ^f Stat. 42. E. 3. c. ix. ^g Vincent's extract of sheriffs, out of the pipe rolles. Rot. pat. 16. E. 1. m. 15. 14 Jac. rep. MS. f. 18. 4 et 5 P. et M. Dyer 151. 35 E. 3. interpleder 15. Co. sur Lit. f. 168. Rot. pat. 14 E. 1. m. 9. 1 H. 4. c. xi. ^h Cambden Scotland. f. 8, 17.
ⁱ Stat. Ruthland. 12 E. 1. ^k M. 13. Jac. B. R. MS. rep. f. 33 et 45.

precedence before all noblemen within his countey; they are placed before barons, in a charter of king Steven¹ to the hospital of St. Leonard's in Yorkshire; and every daye's experience sheweth it.

For power, he is the king's lieutenant in the countey; hath the custody of it graunted to him, and the power of the countey under his commaund. The power and authority of his office, may be summed up to consist chiefly in three points; to collect the king's dues, to execute the king's proces, and to preserve the king's peace within his countey.

¹ In biblioth. Cotton.

C H A P. IX

Of Bucks.

I Have much reason from nature, education, favour and habitation, to honor and affect this country^a. It hath nourished and honored me : and it is butt justice, that I should endeavour to doe them respect and service, where I am thus obliged. I have therefore chosen this writ to place my imperfect notes upon it, rather than another; and wish it were in my capacity, to give a testimony of the honor, and love, I ow and beare to this countrey. It is one of the most pleasant, populous and fruitful shires of England; and as little wanting of any thing requisite for the sustentation, and delight of the life of man.

It takes the name of Buckinghamshire, not from buckes or deere (as some have fancyed) but from the faxon word ^bbuchen, as Cambden^c rightly surmifeth, which signifyeth beech trees, wherof, in one part of this countrey there is great abundance: as that countrey in Germany, bearing beech trees, is therefore (saith he) called Buchonia: and a town in Norfolke, fruitfull of beech trees, is from thence called Buckenham.

There may be the more probability for this conjecture, in regard of the words, both in Germany and in the northerne countryes, by which they call beech trees, and have some affinity with the sound of Bucks. The high dutch call a beech, ein buckban, and buchen. The low dutch call it buckenboom, and beeck-boom. The swedish and danish say bog, and boken. And from these appellations might

^a Bucks.^b Buchen.^c Britania, Buckinghamshire, p. 393.

probably come, the name (as it is in some antient records) of Bokenhamshire, and as we att this day terme it, of Buckinghamshire. Other of the languages in those partes of the world, also have some likenes of sound heerunto. As the poles call it bukow dreewo; and the hungarians call it bik. And from these or some of them, it is no streined derivation of the name of the countey of Buckingham.

It is divided into two parts, the hilly and woody countrey, which they call the chilterne; and the low and fatt countrey, which is called the vale. The Chilterne^d takes its name, from the chalke wherof those hilles are composed; which the old english called cylt, and we now call chalke.

Some fetch it from the latin word calx, for chalke. With which agreeth the swedish and danish word kalck, for chalke. And from thence not improbably, the name of our chiltern countrey.

This island some doe hold, was called Albania^e, from the white cliffes, or chalke hills along the coasts, especially between us and France.

From this chilterne countrey may a good omen be produced, that their abounding with chalke, may cause a marke of approbation on them: as it was of old, 'when they said they would marke one with chalkè, it was to commend and approve him; as to marke one with a coale, signified to condemne him. This chilterne countrey, though not of so fertile a soyle as the vale, yett it is very healthfull and pleasant, and of good profit to the industrious inhabitants. These

^d Cyltæne

^e Ab albis rupibus.

^f Cretâ notare, pro approbare; sicut

carbône notare, pro damnare.

chalky hills are richly adorned with pleasant woods and groves, consisting for the most part of beech, which crown the topps of the hills; and att the foote of them, gently glides the river Thames, staying to carry their burdens (which are not smalle) of wood, and come to her chief citty London; and returnes money, and other necessary commodities in exchange for them. Indeed she is a good neighbour, enriching this countrey by her navigablenes, and allowing them sufficient meadow for their hay, and great store of salmons, trouts, pikes, pearch, eeles, and other good fish, for their provisions. She hastens not by a quick stream, though sweet and clear, through this countrey: butt slowly keeps on her way, delighted with her flowery bankes; and the bending groves saluting her.

Of pasture ground, the Chilterne hath no plenty, butt enough to serve their turne. And the arable by labour yields a great increase, and is alwayes improveable; when the richer lands admitt of no amendement, butt att present yield their uttmost profit: butt the chilterne ground inviteth industry, and promiseth the laborious husbandman a recompence answearable to his paines; especially in a wett season, according to their old proverbe:

Every day a showre of rayne,
And uppon each Sunday twayne.

It breeds men of able bodyes, quick and lively spirits, healthfull constitutions, inured to labour, and in great numbers; fitt to serve their king and countrey.

The other part of this countrey, which they call the vale, is a most rich and fruitfull countrey, full of corne, and of large and fatt cattle, with which they supply London, as well as themselves and

their neighbours. And although the cattle of the Chilterne be not so large, yett the meat is sweet and wholsome.

The vale is generally champion, open spacious fields, affording much pleasure to the gentleman, in hunting and hawking, and therby inuring them to exercise, and acquainting them with their countrey; which are manlike recreations, and usefull exercises. I mean not such hunters, of whom the poet^e exclaimes,

The hunter staves in the cold ayre, and wett;

His tender wife att home he doth forgett.

Of whom Petrarch saith: One may often reade of Plato playing the philosopher, Homer the poet, Tully the orator, and Cæsar triumphing: butt (saith he)^h they will never reade any thing of a hunter, who consumes all his time in vaine sportes, wholly neglecting his serious affayres. To such a one our author saith: This is the love, this the felicity, this the all, which you render to God, your countrey, parents, and friends!ⁱ A little of the torne prey, and sweat, and dust; and an evening story of the losse of day-light. Butt I am none of those who condemne the generous and healthfull exercise of hunting, and hawking; for then I should condemne myselfe. The holy scripture approves hunting. As when Isaac^k sent forth his son Esau, to hunt. And by that ordinance: 'That whosoever hunteth and catcheth any beast or fowle (which justifies both hunting and hawking) that may be eaten, he shall poure out the blood therof, &c. And by

^e Horace, lib. i. ode 1. ——— Manet sub Jove frigido

Venator, teneræ conjugis immemor.

^h Venatorem puto non legerint.

ⁱ Laniatæ prædæ paululum, et sudorem et pul-

verem; et nocturnam perditæ lucis historiam.

^k Gen. xxvii. 5.

^l Levit. xvii. 3.

that passage : ^m The sloathful man roasteth not that which he tooke in hunting. And experience teacheth, that all nations have used, and delighted in, these sports.

The Graecians allowed hunting : and Plato giveth the rule, that all kind of hunting, and that with hounds, ought to be used by the young men, bicause of the advantage it brings ⁿin knowing their own countrey ; and to breed them up in exercise and hardship, and with the strength of our bodyes, is to be approved °.

The

^m Prov. xii. 27.

ⁿ In cognoscendo suam regionem.

° Plato de Leg.

Corporis nostri viribus, probanda est.—This period is rather obscure. The author seems to mean that, by the authority of Plato, “ hunting which is performed with hounds, &c. or with the activity and strength of the body, is to be approved of in young men :” and he gives for reasons, “ that they may know the situation of the country, and be bred up in exercise and hardship.” The passage, referred to, is at the end of the 7th book, vol. 2. p. 823-4. edit. Serran. which I have transcribed, for the reader’s satisfaction. I have also subjoined what may be called Plato’s game law. Τὸν μὲν νομοθέτην ἐπαινέσαι καὶ ψέξαι χρεὼν τὰ περὶ θήρας, πρὸς τὰς τῶν νέων πόρους τε καὶ ἐπιτηδεύματα.—Μόνη δὴ πᾶσι λοιπὴ καὶ ἀρίστη ἡ τῶν τετραπόδων, ἵπποις, καὶ κυσὶ, καὶ τοῖς ἑαυτῶν θήρα σώμασιν· ὧν ἀπάντων κρατῦσι δρόμοις καὶ πληγαῖς καὶ βολαῖς, αὐτόχειρες θηρεύοντες, ὅσοις ἀνδρείας τῆς θείας ἐπιμέλεις.—Νόμος δέ ὅδε. Τάτους μηδεὶς ἱερὸς ὄντως θηρευτὰς κωλύετο, ὅπῃ καὶ ὅπῃπερ ᾧ ἐθέλωσι κυνηγετεῖν. Νυκτερευτὴν δὲ, κυσὶ καὶ πλέκλαις πισὸν, μηδεὶς μηδέποτε ἑάσει μηδαμῶς θηρεύσαι. Τὸν ὀρνιθευτὴν δὲ ἐν ἀγροῖς μὲν καὶ ὄρεσι, μὴ κωλύετω· ἐν ἐργασίμοις δὲ καὶ ἱεροῖς † ἀγίοις (forte ὄροις) ἐξείργετω ὁ προστυγχάνων.

Which may be thus rendered into English.

“ The lawgiver ought to recommend, and also to set a mark of disapprobation upon, the different kinds of hunting as they are proper, more or less, for the employment and institution of youth.”—Having then mentioned, but not approved of, divers kinds ; the Athenian in the dialogue subjoins.—“ The only hunting which remains, and which is the best for young men, is that of quadrupeds, with horses, and dogs, and with their own persons. For hunters, who delight in that manhood which is divine, catch all such game by swiftness of body, and with blows and darts from their own hands.

The tumultuouse hunting, in other countreys, affords little pleasure. Butt in England, in Bucks, to see a pack of nimble working hounds well suited, well mouthed, and well hunted, to follow a chace with strange cunning, diligence and wonder of scent, which was not bestowed on them, nor the cunning and leaving that scent by the creature, butt for the end of hunting; to heare their sweet lowd musicke, to follow them att a fleet rate, leaving their foot commanders behind them: is an exercise and recreation fit for nobles, and active spirits; and a pleasure worthy of a prince, and his associates. Butt I must ask pardon for this digression, in the sence I have of the pleasure of this countrey, and of my obligations to my noble countrymen.

All over this countey are many pleasant and rich seats of the nobility, and gentry; who live in commendable hospitality, and not engaged in factions. The yeomandry are stout, and civill, and live comfortably; and their farmers are not in penury. The houses are more scattered in the Chilterne, than in the vale where they stand thicker together, and appear more in towns; the perticular description whereof will deserve a speciall treatise to sett them forth, with the lustre and rights and antiquity of the nobles and gentlemen, who are the lords of them.

This countey was antiently joyned with Bedfordshire, in one shrievedome; and the gentlemen of each countey chosen in turne to hands——And be this the law. Such as these, who are indeed sacred hunters, let no one hinder, whensoever and as far as they are pleased to hunt. But the night poacher, who trusteth to his dogs and his nets, let no one any where, or in any wise, suffer to hunt. And let him who meets the fowler in the fallow fields, and on the downs, not hinder him: but he may be driven out of the wrought grounds, and sacred places," &c. (M)

be

Be sheriffs of both countyes: which I have the more cause to remember, my own great grandfather being the last sherife of both countyes, in queen Elizabeth's time, when they were divided, as several others were, which are in Vincent's extracts^p.

Middlesex, which^q was joyned to London, continues in the same sherifwick. ^r One sherife was of Warwick and Leicestershire, till queen Elizabeth's time. ^s One was made sherife of Oxon, and Berks, by H. 6.; and by queen El. divided. ^t In Edward the first's time, an archbishop was sherife of Nottingham, and Derby; and many other sherifs were antiently of two countyes. Butt by queen Elizabeth, each county had its perticular sherife, and so continues.

This countey of Buckingham had the perticular honor, before other shires of England, that the eldest son of the king was made sherife of this countey, by his father king Henry the third^u; and so he is named in the rolles, Edward the first borne of the king, sherife of the countey of Buckingham. And may all honor and happines be continued to this noble countey, and her worthy inhabitants!

^p Out of the pipe rolles.

^q Rot. pat. 50 H. 3.

^r 5 E. 2.

^s 37 H. 6. 21.

^t 2 E. 1, Rot. liberat. et allocat. m. 3.

^u Record.

temp. H. 3.

Greeting.

THIS is a word of salutation; and the meaning of it appears in that passage^a, where David sent to Nabal: Goe to Nabal, and greet him in my name; and thus shall ye say to him that liveth in prosperity: Peace be both to thee, and peace be to thine house, and peace be unto all that thou hast! Wishes of peace and prosperity, by way of salutation, to the party; and that from a king, to a subject.

The vulgar latin and the arabick versions have it, ^b You shall salute him in my name. And it was the ordinary phrase of salutation among the hebrewes, Peace be unto you! As in that passage of Samuel to Saul: ^c They will salute thee, that is, aske thee of peace. Thus David ^d saluted the people; and Christ himselfe faith to his disciples, ^e all haile! So the angell salutes Mary ^f; and very many instances of the like are obvious in the holy story. And generally in all nations, the custome of saluting one another, and peticularly of kings and princes saluting of their subjects, was taken up and is in use att this day. It is no other butt a kind of blessing, and prayer of prosperity, to those whom they salute, or write unto. And therefore is called a salute^g, from wishing health and safety to the party, so the hebrew word bears it; for a blessing, which all kings who are fathers of their country, doe, or ought to give unto their people, on all occasions.

^a 1 Sam. xxv. 5, 6.^b Salutabit is eum nomine meo.^c 1 Sam.

x. 4.

^d 1 Sam. xxx. 21.^e Matt. xxviii. 9.^f Lu. i. 28.^g Saluto, salutem opto.

In the most antient of our records, patents, commissions, and writs of our kings, the same word ^h greeting is inserted. And so it hath bin generally used, both with us, and in all other countryes. The pope writes, ⁱ Greeting, and the apostolicall benediction ^l in the beginning of his bulles. The emperor writes, ^k To such a one, grace and all good! in his patents to his subjects. And in others, To such a one, our imperiall grace and all good! &c.

The king of France ^r writes, To all present and to come, greeting.

The king of Spayne writeth to all his officers, and to all his people, [†] Greeting and grace! &c. And this is the generall stile of princes, when they write unto their nobles, and officers; and frequently, to their inferiour subjects.

This gives a good note and caution for princes to be humble, to salute their people, to blesse them, and to wish and indeavour their wellfare. Moses, who was a most absolute prince, is stiled ^m very meeke, above all the men which were uppon the face of the earth. ⁿ Nothing is more kingly and munificent, than to love, and wish well to all men. St. Gregory saith, ^o that the more high one is by nature, and the more humbly he carryes himselfe, the more deare he will be to the people; who love nothing better than greetings, and respects from their superiours: and that love ^p of men is most beloved.

^h Salutem.

ⁱ Salutem et apostolicam benedictionem.

^k Aldus Ma-

nutius in vitâ Ludovic. 4. et Margnardus Fehaerus, p. 31; gratiam et omne bonum.

^l Les edicts des roys de France, tom. i. l. i. tit. 5. Salut. &c.

[†] Salud y gracia.

^m Num. xii. 3.

ⁿ Cicero. l. i. de Orat. Nihil tam regium, &c.

^o L. vi.

Quo sublimior est naturâ, eo humaniorem inferioribus sese si præbuerit, charior populo futurus est.

^p Φιλανθρωπία.

by them. According is that of Seneca ; ^a he that will be beloved, lett him rule with a courteous hand.

^a The graecian king Agesilaus, writing for the release of a captive, thus expresseth himselfe. If he hath not offended, I intreat, that you would forgive the man : if he hath offended, forgive me : but howsoever forgive, &c. And surely it is no dishonor, nor diminution to the greatest prince, to use civilities, and courteous salutations to his people. As Bertram notes in his preface, that with princes, greatnes and courtesy ought to strive, who shall excell : and the greater they are in dignity, the more they should overcome with affability. ^a The more eminent his dignity is, and the more high one fitts, the more courteously should he demeane himselfe in civill conversation. The psalmist ^b instructs thus : A man's pride shall bring him low, butt honor shall uphold the humble. The more honorable a man is, he ought to be the more humble : and the more humble a man is, he will be the more honorable. Wherunto that passage in St. Matthew ^c, cited out of Micah ^d, seemes to have an allusion. In Micah it is : Although thou be little among the thousands of Judah, yett out of thee shall he come forth unto me, that is to be ruler in Israel. Uppon which it is noted ^e, that the words of the prophet may be retained, and yett the sence of Matthew cleared. The prophet speakes by a negative interrogation. The syriack version is ; ^f as if thou wert the least, &c. The arabick saith ;

^a S. polit. c. xii. Qui vult amari, languidâ regnet manu. ^b Plut. in apotheg. Lacon. Si nihil peccavit, oro ut hominem dimittas ; si peccavit, mihi dimitte ; sed omnino dimitte, &c.

^c Quo eminentior est dignitas, et sublimius fastidium, (quære fastigium ? M.) tanto civilius in civili conversatione sese dimittat. ^d Psal.

xxix. 23.

^e Matt. ii. 6.

^f Mic. v. 2.

^g Spanhemius, Wal-

laus.

^h Quasi minima fuisti, &c.

art thou small? by interrogation. Uppon the whole is thus concluded, by Wallæus. That which the prophet by interrogation, and more obscurely fetts forth; that the evangelist would teach us, by an open negative. Thou art the least, and therefore thou art not the least. And though thou art the least; yet bicause thou hast honored God more than the rest, God will honor thee more than the rest of the princes of Judah. Thy being little and humble, shall bring thee to the greatest dignity, and honor. Out of thee shall come the greatest princes; which will be to thee greater honor, than all the rest have. Thou shalt produce that great prince David; and after him, that king of kings and lord of lords, that great prince the son of God, our Messiah, our saviour.

The blessed evangelist^z affirmeth, whosoever shall humble himselfe, as this little childe; the same is the greatest in the kingdome of heaven. Which is an eminent instruction for humility, and a sure preferment to the kingdome of heaven: whatsoever falles out, as to the kingdomes of this world.

The like instruction of the same evangelist, is often seconded in other places^a of scripture. Whosoever shall exalt himselfe, shall be abased: and he that shall humble himselfe, shall be exalted.

The wisdom of our law is excellent, in the antient formes and precedents of our writs and legall instruments, to take the affections of the people; and to expresse an humility in the supream magistrate: much different from the later invention of our countrey

^z Matt. xviii. 4.
xxix. 23. and xv. 33.

^a Matt. xxiii. 12. Lu. xiv. 11. and xviii. 14. Pro.

clerkes who write in a more magisteriall stile, in the warrants of inferior officers. These are to will and require you : and these are in his majesty's name straightly to charge and commaund you. When his majesty himselfe, in his own name writes, to the sherife of Buckes greeting. Butt the reason is obvious. Many an inferior officer, is a greater man in his own conceipt, than a meeke and humble prince is in his own estimation. The best rule is : ^b learne of me, for I am meeke and lowly in heart ; and ye shall find rest to your souls.

^b Matt. xi. 29.

C H A P. XI

Whereas by advice.

TH E king before he calls his parlement, takes advice about it: according to that rule of Sallust. ^a Consult before you begin, and then act maturely. With which agrees Seneca; ^b be long in advising, speedy in acting. And that of Procopius; ^c that advice ought to go before action. So doth the king take advice, before he summoneth his parlement. And indeed nothing is more necessary (as Guiccardine ^d notes) than to take advice in great affayres. For (saith Fabius Maximus ^e) advice gives more things to men, than men give to things. * It is the great art of government. And he that takes it from a commonwealth, doth as it were, take the reason from the soule. ^f Doubtles those things are better dispatched, which are managed by advice; than those which are ordered without it. ^g Bodin and others note, that those who have absolute power, will yett so study the minds of the cittizens, to preserve their obedience, that for this cause they will make use of advice. For when subjects perceive affayres to be managed, either without advice, or contrary to it: they despise them, and slightly esteem of them; and either fearfully, or slowly, obey the commaunds of their superiors. This was the great disadvantage of our british auncestors (noted by Tacitus ^h), that they did not advise together, to prevent the common daunger. Which makes good that assertion

^a In Catilin. Priusquam incipias, consulta. facito.

^c De bel. Vandal. lib. ii. Negotium consilio praevenire oportet.

^d Lib. i. hist.

^e Apud Livium. Magis res dant hominibus, quam homines

rebus. * Ars magna est imperii, consilium.

^f Cicero. lib. i. Rhetor.

Melius accurantur, quae consilio geruntur, &c.

^g De Repub. c. ii. Donat.

Jonnal. in rep. Venet.

^h In vita Agricol. p. 30. b.

of St. Ambroseⁱ, that counsell is given to good men ; butt correction to those that wander, and will take no advice. What will wisdom avail thee, (saith the father) if thou deniest counsel ? If thou givest not liberty to him that adviseth thee ; thou shuttest the fountaine, that it can neither flow to others, nor profit thyselfe. How much more beneficiall to Pharaoh, was the advice of Joseph, than if he had given him money, which lesseneth by use ; butt counsell increaseth by it. Cassiodore^k concludes, that every wise man seeketh advice. And Tobit adviseth his son^l, to aske counsell of all that are wise ; and despise not any counsel. And the son of Syrach affirmes^m, that the counsell of a wise man continueth as the fountaine of life ; and sayth, my son doe nothing without counsel, and thou wilt not repent when thou hast done. In that passage of the wise man, ⁿ understanding shall keepe thee ; the vulgar latin reads it, ^o counsell shall keepe thee. And where it is said, ^p I wisdom dwell with prudence ; the latin is, ^q in counsel. And God himselfe saith, ^r counsel is mine. And who would not drinke at that fountaine ? The wise man is full of exhortations, to take advice. ^s He that hearkeneth unto counsell, is wise. Without counsell, purposes are disappointed ; butt in the multitude of counsellors, they are established. Nehemiah^t exhorts his people, come, and lett us take counsell together. So doth Isaiah^u ; take counsell, execute judgement. Many other places of scripture might be alleadged, pertinent to this purpose. Butt I forbear it, supposing that there is little need of spending much time to inforce this trueth, so well known, and so clerly admitted by all.

ⁱ Consilium bonis datur, correctio errantibus.

^k 6 Epist. 29.

^l Tob. xviii. 19.

^m Ecclesiast. xxi. 34.

ⁿ Pro. ii. 11.

^o Consilium custodiet te.

^p Pro. viii. 12.

^q In consilio.

^r Pro. viii. 14.

^s Pro. xii. 15. and xv. 22. and xi. 14. and xix. 20. and

xxiv. 6.

^t Neh. vi. 7.

^u Is. xxiv. 6.

For examples of making use of advice, we may goe as high as a precedent of God himselfe. ^wIn the beginning God created, &c. Uppon which words, the reverend primate of Armach Dr. Usher notes, that the hebrew word ^x for God, is in the plurall number; and the word for created ^y, is in the singular number; which the latine renders accordingly ^z, and is rendred in english by a circumlocution, as if it should be said, the three persons one God did create. Which (saith he) is a prooffe of the Trinity; as is also that text; ^alett us make man in our image, after our likenes. And in both these texts appears a consultation, about making the greatest piece of the great worke of the creation; man.

The ingenious bishop of Excester Dr. Hall saith ^b, when all helpes and ornaments were prepared, then God decreed, and after a divine manner consulted with himselfe, the Father with the Son and Holy Spirit, concerning the creation of his chiefe creature man. The annotations on the Bible ^c agree heerin, and most of the expositors, that this is spoken after the manner of men, as by way of deliberation and advice, for a worke of great weight and moment. Butt (say they) besides, the word of plurality us, may intimate the Trinity ^d distinctly noted. And in this place, God the father seemeth to speake, as communicating by way of counsell, with God the son and God the holy ghost, concerning the creation of man.

Agreeable to this exposition, are the Dutch notes on the Bible ^e; and St. Augustin ^f gives the rise of it. The plurality of the Trinity (saith he) is rightly understood. Paraeus is to the same effect ^g; that

^w Gen. i. 1.

^x אלהים

^y ברא

^z Dii creavit.

^a Gen. i. 26.

^b Hall's paraphrase on this text.

^c Published an^o

1651.

^d 1 Ep. Jo. v. 7.

^e Published 1657.

^f De civitat.

Dei, l. xvi. c. 6.

^g Comment, in Gen. i. 26.

the Father heere speakes to the Son and to the Holy Ghost. Lett us make man after a humane manner. These three advise together, about the creation of man: not that we should imagine any doubting to be in God the creator; butt that we should have in esteeme man the creature. God, as in consultation faith, lett us make man. Now he did not so for the other creatures, butt concerning man he seems to take advice in his creation; and therby commends the eminency of man above all other creatures, and the use of advice and counsell to men, in all their weighty actions.

To answer that note of the Trinity heer in counsell, we find among the attributes of God, that the prophet ^b calles him great in counsell, and mighty in worke. And among the appellations of our Saviour ⁱ, that of counsellor is given him; which the septuagint render, ^kthe angell of the great counsell. And of the Holy Ghost it is sayd, [†]the spirit of counsell shall rest uppon him. Severall other instances might be given pursuant to this, that counsell is attributed to God, and to all the persons in the Trinity. And by the word it is left as an example, and praecept for men to follow; by which they may obteine good, and imitate their wise omnipotent creator, according to that of Plato ^l. Imitate me, in the power I putt forth in your creation.

The all wise God omnipotent, who can doe whatsoever pleaseth him, acting according to the counsell of his own determinate will; who hath no need of any helper, nor is any essence capable to advise him: yett for instruction and example to his people, he is pleased to condescend to our understandings, and to expresse his pleasure so, as if he seemed in this great worke of the creation of man, to take

^b Jer. xxxii. 19.

ⁱ Isa. ix. 6.

^k Μεγαλῆς βουλῆς ἄγγελος.

[†] Isa. xi. 2.

^l Vim meam, quam in vestro ortu adhibui, imitamini.

advice,

advice, and to consulte about it. How carefull then should men be, to follow this best of patternes, to imitate this unerring example; that in our greatestt affayres, the wisest of men neglect not the assistance and advice of others: wherby we shall receive much satisfaction, in the performance of our dutyes; and so may hope for the better success in our indeavours.

As God himselfe hath given us the rule and example of taking advice in our affayres: so is the same generally implanted by nature, and reason, in the hearts of all understanding men. And it will not be denyed, butt that in all times and in all nations, it hath bin the universal opinion and practise, to make use of counsell and advice from others.

Thus we see, that advice and counsell is a sacred thing. The heathen^m could asseert so much, where he saith, consultation truly is a sacred thing; and the poetⁿ confirmes this.

Right counsell is the safest guide

Where wisdom dwells never deny'd.

Accept it early, thou wilt find,

'Tis sacred in a prudent mind.

In the sacred story, in all times and countryes, and among all sorts of people, examples occurre of making use of advice and counsell. We read of advice taken by the people under Nimrod. ° Goe to, lett us make bricke, &c. And of the princes^p of Pharaoh, whom expositors affirme, to have bin those whose advice he tooke in his af-

^m Plato ad Perf.

ⁿ Menander. Βελῆς γὰρ ὁρθῆς ἔδεν ἀσφαλέστερον. Βελῆν

πάντος πράγματος προλάμβανε, ἰέρον ἀληθῶς ἐστὶν ἡ συμβουλία.

° Gen. xi. 4.

^p Gen. xii. 15.

fayres. And Abimelech^a called his servants, and told them his dreame: he advised with them, in that matter. And the like in many other places^r of Moses's story. Ephron the Hittite advised with the people^s, about the contract between him and Abraham. The like was done by Hamor and Shechem^t, in the matter of Dinah. The like is held of Laban^u, when he gathered together all the men of the place; that it was to advise with them, about the marriage of his daughter. ^w Moses is commaunded to gather the elders of Israel together, in Aegipt; and Grotius saith, ^x they were the counsellors. No man had greater experience than Moses, of the good of counsell and advice; perticularly of that^y which his father-in-law Jethro gave him: and he declares his being sencible of the evill of the want of it, where he complains^z, that he is not able to beare the burden of the people alone. And God was pleased to give him advisors, and assistants, by instituting the public sanhedrim.

We find mention^a of the princes of Israel, heads of the houses of their fathers, who were counsellors of the nation. And^b of the elders of Moab, and of Midian, counsellors in those nations.

Severall counsells, and taking of advice are mentioned^c, of the princes, of the chiefe of the fathers, of the heads of the tribes, of the elders, and of the heads of the people, in the time of Moses; who was a wise man, indued with the spirit of God: and yett held it no derogation to him, to make use of the advice of others. The

^a Gen. xx. 8.

^r Gen. xl. 2. and xli. 10. and xxxvii. and xxxviii. and

xlv. 16. and l. 7.

^s Gen. xxiii.

^t Gen. xxxiv. 21.

^u Gen.

xxix. 22.

^w Exod. iii. 16.

^x Praerant consilio.

^y Exod.

xviii.

^z Num. xi.

^a Num. vii. 2.

^b Num. xxii.

^c Num. xxvii. 2. and xxx. 1. and xxxvi. 1. Deut. v. 23. and xix. 17. and xxxiii. 5.

like constant use of advice, was made by his successor in wisdom and spirituall gifts, as well as in the government, that successfull and renowned prince Joshua^d. As in the league with the Gibeonites; in the case of the daughters of Zelophahad; att the setting up of the tabernacle, and other occasions.

We find likewise mention^e of the princes and elders of Succoth, and of^f the elders of Gilead, who were their counsellors; and the like in divers other places. ^g The levite relating his story to the congregation, concludes; give heere your advice and counsell.

^h The elders of Israel come to advise Samuel; and the people advise, to the rescue of Jonathan. We reade [†] of the princes of the Philistins, and of the men of Judah, of whom advice was taken.

The most wise king Solomonⁱ, yett thought fitt to take advice of the elders of Israel, of the heads of the tribes, and of the chiefe of the fathers. And it had bin well for his son Rehoboam^k, if he had followed the advice of his father's counsellors, the old men. ^l Benhadad takes advice of his counsellors, in a case of much difficulty. The elders sate with [‡] Elisha; and are called to advise with

^a Jos. ix. 15. and xvii. 4. and xviii. 1. and xxii. 12. and xxiii. 2. and xxiv. 1.

^b Jud. viii. 14.

^c Jud. xi. 5.

^d Jud. xx. 7.

^e 1 Sam. viii.

^f 4. and x. 17. and xiv. 45. and xxix. 4.

[†] 1 Sam. xxix. 4. 2 Sam. ii. 4.

and v. 1. and xvii. 4.

^g 1 Kings, viii. 1. 2 Chron. v. 2.

^h 1 Kings,

xii. 6—8.

ⁱ 2 Kings, vi. 8.

[‡] 2 Kings, xxiii. 1. The manuscript

in this place reads, *Jeremiah*: which I have corrected *Elisha* upon the authority of the marginal reference to the text where this latter is named. The name of *Josiah* is also inserted after *king*, to complete the sense. (M)

king Josiah. ^m David adviseth with the captains and leaders, and with the princes, captains, stewards, officers, &c. ⁿ King Hezekiah, tooke advice of the princes, and congregation; and so did all the best, and wisest of their kings. We reade in Ezra ^o, of taking advice; and in the times of all their kings and governors, the wisest and ablest of them, who constantly made use of counsell.

In the time of their captivity under the Babilonians, they had their counsells. And likewise under the Romans, as is evident in many places of the new testament ^p, in very many places. Which who so desires a larger satisfaction on this matter, may easily find it by perusall of that sacred word, which in the study of it, affordes more true wisdom, satisfaction, and true and incomparable pleasure to a mind desiring truth and spirituall wisdom, than can possibly any where else be gained.

Nor is there scarcity of humane examples, for the continuall and universall making use of advice, and counsell, in all great occasions; especially by all civilized nations. It is true, that Tacitus ^q layes it as a blemish upon our british auncestors, as hath bin before noted. ^r They did not use to consult together in common; seldome had they counsells, for resisting the common daunger; so that whilst they

^m 1 Chron. xi. 1, 3. and xiii. 2. and xxviii. 1. and xxix. 1, 6. ⁿ 2 Chron. xxx. 2. and xxxi. 8. ^o Ezra, i. 5. ^p Mat. ii. 4. and xxvii. 1. Mar. xv. 1. Lu. v. 17, 26. and xxii. 66. Jo. xviii. 28, 33. Acts, v. 5, 20, 27, 34. and vi. 12. and vii. 2. and xv. 2, 4, 6, 13, 19, 22. and xvii. 15. and xix. 32, 39. and xx. 17. and xxi. 14. and xxiii. 35. and xxiv. 1, 10. and xxv. 6, 11, 12, 16, 23. and xxvi. 1, 10. 1 Cor. v. 4. 1 Tim. v. 17. Tit. i. 1. 1 Pet. v. 1. Rev. iv. 4. and v. 11, 12. and xxi. 24. ^q In vit. Agric. p. 306. ^r Quod in commune non consulunt, rarus ad propulsandum commune periculum conventus; ita dum singuli pugnant, universi vincuntur.

severally fight, they are universally overcome. Yett our histories relate, both in their's, and in the time of the Saxons, Normans, and since, a constant frequent making use of advice, and counsell. So that Coke^s reckons, since the time of H. 1. downwards, 280 sessions of our parlements.

' The graecian commonwealths had their constant use of advice, in all matters of importance, either for peace or warre; the which they never undertooke, without first taking advice uppon it.

The Romans did the same: and those princes among them, who exercised the most absolute power, would yett take advice of others. Romulus commaunded according to his will; butt held it wisdome to take advice, and therefore instituted a counsell. " Caesar communicated his affayres to the chiefe, and sometimes to the senate. " The like was done by Augustus, Tiberius, and all their wise princes.

* The French, Spaniards, Italians, Germans, Polles, Swedes, Danes, and what nation can be reckoned, butt have constantly made use of counsell, and advice; which to name perticularly, would make too great a volume.

^a Coke com. on Litt. f. 110. a. ^b Gothofredus, e. Athens, &c. Treasury of antient and moderne times, p. 86. &c. ^c Tacitus, lib. iii. Annal.

^d Dion. lib. xliii. et liii. ^e Lib. de rep. Hisp. et Gothofred. Hisp. &c.

And assent.

THE king is pleased not only to have the advice, butt the assent likewise of his counsell, about this weighty buisnes : and this course of his proceeding to publish by his writ, to all his people ; that therby they may take notice of his great care of their wellfare, and of his making use of advice, and concurrence of judgement, in his greatest actions and wherein they are most concerned.

The orator ^a saith truely ; he that takes away sight or assent, takes away all action out of this life.

The kings of England are not of the judgement of the persian king, who spake to his counsell in this manner.

^bLeast I should seeme only to make use of my owne judgement, I have assembled you : butt remember, that it is your part rather to obey, than to persuade. He affords little roome for advice, lesse for assent ; when he admitts them not persuation, butt requires obedience. Our kings proceed in a much wiser course, taking not only the advice, but the assent of their counsell in their great affayres. Thus truely is ^ccounsell derived from the meeting, and result of many [†] reasons into one sence, and assent of judgement ; which

^a Cicero. 4 Acad. Qui aut visum aut assensum tollit, is omnem actionem tollit é vita.

^b Ne viderer meo tantummodo usus consilio, vos contraxi ; caeterum mementote vobis magis parendum esse, quam suadendum.

wood, f. 10. dorf.

^c Consilium, à con et salio. Lind-

[†] Doth not the sence require, that we read *persons*, in this place ? (M)

commonly proveth most effectually, and carryeth the greatest force and authoritie along with it. Not that the king is bound up by the judgement of this his councill, lesse than by the judgement of his great counsell : of the last of which held under king Charles 1^d. at Yorke, it was resolved by the lords in parlement, that the king at his great councill may follow the advice of one peere, contrary to all the rest if he please. So he may in this councill if he thinkes fitt : butt usually he takes their assent, to give the greater satisfaction to his people ; and to cause the better reception of that which by their assent is so declared.

Yett it may be noted, that it is no rare thing for some counsellors, to be inclinable to assent to the opinion of their princes : especially if they are of the judgement of those whom Martiall thus describes :

*Thy lyes I do believe, and when thou dost
Repeat bad verses, I commend them most.

When thou dost sing, I sing ; and alwayes when

Pontilian, thou dost drinke, I drinke agen.

They can be like Ben. Johnson's Mercury ; a faus'd Mercury, or a salted Mercury, or a dryed Mercury, or a pouldered Mercury, or whatsoever their lord will have them to be. Or like his Mosca^f, who cryes out in admiration of parasites ; I muse the mistery was not made a science, it is so liberally profest. Almost all the wise world is little else in nature, butt parasites, or sub-parasites : such as assent to whatsoever their masters propose, and those again who com-

^a 16 Car. 1.

* Mentiris, credo ; recitas mala carmina, laudo ;
Cantas, canto ; bibis, Pontiliane, bibo.

^f Volpone.

mend the assenters. But such men as are given to flattery, as will assent to whatsoever they thinke will please their prince, Seneca^e censures to be of a broken faith: and the wise man saith^a a flattering mouth worketh ruine. Those counsellors are to be regarded, who with a duetifull and civill freedome speake their minds, and judgments, to their prince: assenting to his opinion, or dissenting from it, as their reason and judgement leades them. And such a counsellor will att last, find more favour, than he that flattereth with the tounge; for such men a wise prince will avoyd, according to that advice^k. Meddle not with him that flattereth with his lippes.

The calling of a parlement is a weighty matter, and to be done uppon great deliberation; not hastily, or unadvisedly; butt with the advice, and also with the assent of counsell: as we see appears by this very forme of our antient writ of summons, which recites the resolution to hold a parlement, to be by advice and assent.

^e Epist. xxi.

^a Pro. xxvi. 28.

^k Pro. xxviii. 23.

^k Pro. xx. 19.

Of our.

TH E note upon this word, is only as to the plurall number, the constant manner of expreffion in the king's name; as we commaund, not I command; and our counsell, our parlement, our kingdome, and the like: the which is used from a singularity, or speciall forme belonging unto greatnes.

The persian and greek emperours, as other princes in the more antient times, often used the singular, as well as the plurall number: butt in the later age it is otherwise, and the plurall number used, both in expreffions to them, and from them.

Thus it is frequent in the holy tongue. For an inferior to speake to a great man in the plurall number, is honorable in the touns (saith our hebrew doctor^a) of Europe; so in the arabick, for a king or great man to speake in the plurall number; and in the holy tounge, to speake of a potentate in the plurall number. And their grammarians make it an enallage of number, when the nounce is plurall and the verb singular; and used chiefly to expresse excellency, in the person to whom it is referred. In Spayne, it is proper only to the king himselfe, and to his vice-royes^b. As we Philip, &c. and we Don Inigo, vice-roy of Naples, &c. Butt in England, it hath bin used by persons not supream. As we Margaret countesse of Richmond, mother of the king, &c. The like hath

^a Aben Ezra ad Gen. i.

^b Caesar Oudin. in grammat. hisp. p. 38. San-

ford in rudim. ling. hisp. p. 57.

^c Rot. claus. xxi. h. 7. p^t 21 et 2. dorf.

also bin used ^a by earles, and sometimes in the instruments of bishops, archdeacons, and their inferiours.

A german lawyer ^c saith, that in the appellations of dukes, princes, counsellors, and doctors, the plurall number is to be used. So it is in our writs of summons to the peeres, officers, judges, and king's sergeants to the parlement; and in the writs of call of sergeants ^f. Butt in a writ to the sheriffe, it was adjudged false latin, and the writ to abate.

^a Tit. hon. Seld. p^t 2. p. 121. ^c Josias Nolden de stat. nobil. civil. c. v.
§. 1. ^f 6 E. 6. Dyer. f. 72. 29 E. 3. f. 44.

Thus it is frequent in the holy tongue. For an inferior to speak to a great man in the plurall number, is honorable in the tongue (with our hebrew doctor) of Europe; as in the arabick for a king or great man to speak in the plurall number; and in the holy tongue, to speak of a potentate in the plurall number. And their grammarians make it an enallage of number, when the noun is plurall and the verb singular; and used chiefly to express excellency, in the person to whom it is referred. In Spanish, it is proper only to the king himselfe, and to his vice-royes. As we Philip, &c. and we Don Inigo, vice-roy of Naples, &c. Butt in English, it hath bin used by persons not supreme. As we Margaret countesse of Richmond, mother of the king, &c. The like hath

^b Caesar Oudin in grammat. hisp. p. 38.
^c Rot. claus. xxi. h. 7. p. 21 et 2. doli.

ad Gen. i.
P. A. C.
hisp. p. 27.

Councell.

WHAT councell the king adviseth with for summoning of his parlement, is in his own pleasure. Though for the most part it is to be presumed, that he adviseth with his privy councell, or his councell of state; and sometimes with his great councell, or councell of peeres, who have frequently given their advice for the summoning of parlements.

It is the liberty of every englishman, to make use of councell in all his affayres. And therefore there is a profession and ranke of men, who are called counsellors at law, whom any may reteine by an honorary gratuity or fee, to advise them in matters of lawe, for settling of their estates; and for assisting them, and pleading for them in their law suits, for their better defence or procurement of their right. These have the priviledge of pleading, and advising for their client, even against the legall interest of the prince himselfe, or of any great man: laying still the foundation uppon the law, which is the people's bulwarke. Such was the beginning of that mutual relation and affection, between the patrons and the clients in Rome: the clients having protection, and assistance, from the patrons in their suits^a; and the patrons had assistance from their clients, in their attendance, in their purses, and suffrages uppon all occasions.

Every private person hath also the freedom of advising with what perticular friends he pleaseth, about his own affayres: like unto

^a Lazius de repub. rom. p. 12.

that of the psalmist ^b, we tooke sweet counsell together, and walked unto the house of God in company.

In like manner the king hath his own pleasure, to advise with what perticular friends or persons he thinkes fitt, about his own affayres. As Plutarch relates of Scipio Africanus, that he consulted in all his affayres with Caius Laelius: and Cicero confesseth, that in his consulship, he did nothing without the philosopher Publius Nigidius.

Butt to speake of bodies of councells framed; the kings of England have had severall such councells, for the preparation and management of their affayres, and for the better government of their subjects.

^c They had their provincially councells; as sometimes in Scotland, chiefly in the time of E. 1. Constantly they had such councells in Ireland ^d, and as antient as the time of E. 3. And this, all our annales testify.

They had the like in France; as appears in our histories, and in the rolles of France and of Gascoigne yett in the tower of London. As that mention ^e which is made of Bernard Argentine, counsellor to the king in Aquitaine. The king had likewise his provincially councell in the marches of Wales, wherof my honoured father was chiefe justice; and the councell in the north; both which in our remembrance, were taken away by ^f act of parlement.

^b Psal. lv. 14.
de statu regn. Scot.
Rot. Vascon. m. 7.

^c 33 E. 1. Rot. claus. m. 13. Sched. et memorand. E. 1.
^d 1 E. 3. Rot. claus. m. 16. p^t 1.
^e 33 H. 6.
^f Stat. 17. Car. 1.

He had also when the times required it, his councill of warre; and sometimes a councill of trade, and another for foreign plantations, as his majesty hath att present appointed. Butt the standing and constant counsell of the king are reckoned ^s to be four.

1. His councill for law matters, who are the judges of the lawes: as appears frequently in our law bookes, which speaking generally of the councill, are to be understood according to the subject matter; as if it be legall, then of the king's councill at lawe, that is, the judges. In H. 3. time it was so understood, ^h where it is said, "ordered before the king &c. and other of the great men, and the king's councill:" which is to be understood the judges, which in the years of E. 3¹. often occurre by the name of the ^k king's councill. Accordingly we find in the booke of assises¹, the award of all the councill, in a question of law. And in another place^m it is said, "by advice of all the councill, Thorpe gave judgement in a matter of law." So in H. 6. time ⁿ "an attachment is before the king and his councill." So in 1 R. 3. ^o it is said, "by advice of all the judges, as the king's councill." And in all these, and many other places in our bookes of law, by the councill of the king is understood the judges.

2. Councill of the king is that which is called his privy councill, for matters of state^p; with whome he useth to sitt in person,

^s Coke on Litt. f. 110.

aliis magnat. et consilio regis.

roy.

Brooke. judgement 179, per advice de tout le council.

pl. 35.

19. 39 E. 3. f. 14.

n. 15.

^h Placit. 15 H. 3. apud Westm. coram rege et

ⁱ Tit. hon. Seld. p. 279.

^k Conseil du

^m 19 E. 3.

ⁿ 27 H. 6. f. 5, 6.

^p 12 E. 3. rot. claus. part 2. m.

8 H. 4. n. 26. 2 H. 6. rot. parl.

and advise about matters of generall concernement to the kingdome; and in forein affayres, in reference to leagues and matters of trade. Many records are cited concerning them in the 4th part of the institutes^p, which are not necessary for a repetition.

It is much in the power of this counsell to doe great good, or great evill, to the king and state. The evils of counsellors are sett downe in the articles^q against Hugh Spencer the father, and the son.

1. Not suffering the grandees, and good counsellors, to speake with the king, butt in their hearing, and att their will.
2. Advising the king not to answear petitions, butt att their pleasure.
3. Displacing good officers, and putting bad ones in their roomes; and preferring ignorant judges.
4. Counselling the king to raise horse and armes, contrary to mag. charta; and so would have moved war for their proper quarrell.
5. For defeating that which the king had graunted in parlement.
6. Not suffering the king to take reasonable fines, uppon alienations, &c.

The like will also appear, in severall of the articles against cardinal Wolsey. As in the 8. That he used to have forein ambassadours to come to him, before they came to the king. 9. And letters from beyond sea, to be first brought to him. 10. And forein intelligences. 11. Wrote of his own head to forein ministers; and first received, and concealed their advices. 15. Would not permit free debate at the counsell board; and consumed much time with a fair tale. 16. Tooke more buisnes uppon him than he could dispatch. 32. That he made debate among the nobles.

Many times, in parlement, the commons have petitioned against the counsell's taking too much power uppon them: as that no man

^p Co. 4 Inst. p. 53.

^q Vet. mag. chart. f. 51. part 2.

^r 25 E. 3.

10. parl. n. 15.

be putt to answear, before the counsell, of his freehold, or of life, member, or fine. To that of freehold, the king agrees; and to this effect an act of parlement^s was afterwards made. Yett in the same year^t, the counsell make a kind of award uppon a matter of title. ^u The first year of R. 2. it is graunted, that no suit be ended before the counsell, butt before the justices. ^w The next year, the like petition against answearing by writ before the counsell, in cases of freehold: which the king graunts, saving, that they shall answear for oppressions. In H. 4. time^x, severall articles are agreed touching the king's counsell: that worthy men be appointed; ^y that they doe not hold plea of any matter determinable att law; ^z that matters of counsell, be dispatched by full assent; and the like. Butt to mention the many petitions, and ordinances in parlement, touching the king's counsell; is too vast an undertaking for this treatise. I shall therefore conclude with the statute of H. 4. ^a reciting, that after judgement the parties are made to come before the king, and before his counsell; and enacts, that it be so no more: and the act made by our late king and parlement, ^b that the privy counsell shall have noe jurisdiction, nor determine any thing concerning the lands, or goods of any person; but the same shall be determined in the courts of law.

^c The oath of a privy counsellor fully describes his duety. 1. That he shall justly counsell the king. 2. In all things, to the king's honor, and the good of his realmes and subjects; without partiality, affection, love, meed, doubt or dread. 3. That he keep secret the king's counsell; and not discover it by word, writing, or otherwise.

^s Stat. 42 E. 3. c. iii. ^t 42 E. 3. rot. parl. n. 27. ^u 1 R. 2. rot. parl. n. 87. ^w 2 R. 2. rot. parl. n. 49. ^x 8 H. 4. rot. parl. n. 67.
^y N. 74. ^z N. 77. ^a Stat. 4 H. 4. c. xxiii. ^b Stat. 17 Ca. 1. c. x. ^c 11 H. 4. rot. parl. n. 14.

4. That he doe nothing for guift, meed, or good, or promise of it.
 5. That with all his power, he help the councill; for the universall good of the king and his land, and for the peace of the same. 6. That he withstand all attempts to the contrary. 7. That he doe all that a good counsellor ought to doe.

It appears^d, that for their great pains, an allowance or salary might be given them from the king. All of them had votes in the starre-chamber.

By the petition of right, a complaint is made of people's being caused to attend the councill, for not lending money to the king; and of charges imposed by lord lieutenants, and deputy lieutenants by order of the king, or his councill, contrary to law: and it is enacted, that it shall be done no more.

They are called the privy councill, or secret councill, from the secrecy that is requisite to be in them, as the wise man informeth; "a tale-bearer revealeth secrets, butt he that is of a faithfull spirit concealeth the matter." These counsellors are nominated by the king, and are properly his counsellors.

3. The third councill of the king is called his^e great councill; which is sometimes, out of parlement, applyed to the peeres of the realme the lords of parlement, who are^h counsellors borne; and under the name of the great councill they have bin often summoned. As in H. 4ⁱ. time, an exchange being made between the king and the earle of Northumberland; the king promiseth to deli-

^d 9 H. 6. rot. parl. n. 25.

^e 3 Car. 1.

^f Pro. xi. 13.

^g Magnum concilium.

^h Consiliarii nati.

ⁱ 5 H. 4. 27. Aug. re.

ver to the earle, lands to the value, &c. by advice of the parlement, if they meet before such a day; otherwise, by advice of his great counsell. There is also mention of this counsell in E. 3. time,^k in many records in the tower of London: and in 'other king's reigns, the name of great counsell doth frequently occurre. And it is not doubted, butt that the king may whensoever he pleaseth, assemble his great counsell of peers, to have their advice; and that the same hath bin frequently the practise of our kings. Butt these counsell, especially of later times, have not taken upon them any other than a consultative power; nor to impose by their authoritie, any new lawes, or any burdens upon the people. The last great counsell yett in memory was held att Yorke, by our late king Charles; and the king's power therein agreed, as hath bin before remembred.

4. Counsell of the king, which is also the supream couucell of the kingdome, is the parlement, called in this and other writts, and in judiciall proceedings, ^m the common counsell of the realme. And it is often called † by the name of the counsell in our parlement rolles, and other records, printed statutes, law-bookes, and annales: wherof many might be cited, if it were needfull in this place. Butt I shall rather content myselfe with a short mention only of this generall, and supream counsell the parlement, and one of the counsell of the king, and kingdome. Butt the perticular description therof, and of the name, parts, constitution, power, and priviledge therof, (being the great scope of the intended treatise) is referred unto the

^k Stat. 37 E. 3. c. xv. 27 E. 3. rot. parl. n. 1.

^l 1 R. 2. rot. parl. n. 5.

5 R. 2. rot. parl. n. 3. 10 R. 2. rot. parl. n. 1.

^m Commune concilium.

† Bracton, lib. i. c. 2. *Regist.* f. 280. 45 E. 3. rot. parl. n. 10. 50 E. 3. n. 132. et 151. 1 R. 2. n. 68 et 110. Stat. Bigamy. 4 E. 1. 7 E. 1. Stat. Mortm. 13 E. 1. Acton. Burnel, 13 E. 1. c. 1. Stat. Vouchers. 20 E. 1. Wast. 9 E. 2. Art. Cleri. 1 E. 3. c. i.

proper and perticular places, for which the same are severally and perticularly designed.

And this course of severall counsell hath bin generall, by all princes and states, in all times practised.

The Jewes seem to have had their distinct counsell: and reason leadeth princes to advise with persons fitt, and proper, and experienced in the matters to be advised on. As David advised with ⁿ the captains and leaders, that is, as well the civill, as the military officers; and his son king Solomon had his severall counsellors. His son Rehoboam had his privy counsell of young men ^o, which advised him accordingly. ^p King Hezekiah advised with his princes, who were as his great counsell; and so had Joshua done ^q, in making the league with the Gibeonites. And very many texts are obvious, shewing the distinct counsell, and severall use of them, unto the supream, generall, common counsell of the nation, to which our parlement not improperly, may in some parts have a resemblance noted. Butt therof occasion is intended to be taken to be perticular, in other places.

The Graecians had many severall, and distinct counsell: as in the first place the counsell of the Areopagitae, wherof we find a mention in the acts of the apostles ^r, whither Paul was brought; and the marginall note saith, this was the highest court in Athens. ^s They had likewise their counsell of Nomothetes; and their Nomophylaci; and the counsell of the Pritanii; the Zeteti; and severall others.

ⁿ 1 Chron. xi. 1. et xiii. 1. et xxviii. 1.

^o 1 Kings, xii. 8.

^p 2 Chron. xxx. 2.

^q Jos. ix. 15.

^r Arist. in Rhet. Quintilian.

Treasury of times, f. 100.

^s Acts, xvii. 19.

^t Budaeus in Demosth.

orat. iii. Cicero lib. iii. de leg. et in 1. orat.

And from the Athenians the ^uRomans are said to have taken the patterne of their government: and of their severall counsellis their authors make frequent mention. Also that of the Venetian's severall counsellis, is compared to those of the Athenians ^w; and in their authors appeare to be of notable wisdom, and rationally institution.

The French after the three estates were dissolved, yett made use of the severall parlements, and other distinct counsellis: and the members of them att this day, retaine the name of counsellors.

^x The french king hath his privy counsell, which they call the secret counsell, and the straight counsell: and they were chosen of the officers, princes, and great lords of France, according to the favour of their master. The same author also mentions the great counsell of the king, consisting of the great lords, ^y the peers of France, and those of his parlement. He hath also a severall counsell for military affayres. And in former times, they had their supream counsell of the three estates.

^z The king of Spayne hath his severall, and distinct counsellis: one of warre, another for sea affayres, another for the Indies, others for severall provinces, and one generall counsell for state matters, and the counsell called the chiefe counsell or ^ahighest counsell of Spayne. And the Portugalls had also their supream counsell, called ^b the most high counsell. And the [†]Arragonians had one, both in constitu-

^u Gothofredus, c. de Rom.

^w Treasury of times, c. of the Athenians.

^x Pasquier Recherches, p. 77. Conseil secret, et conseil estroit.

^y Les

pairs de France et les sieurs de son parlement.

^z Lib. reipub. Hisp. et Gotho-

fredus de Hisp.

^a Concilium summum Hispaniae.

^b Altissimum

concilium.

[†] Guevara, lib. i. f. 15. b. Alvarez Valasco. Origin. Lusitan.

cap. 100. Resp. Hisp. f. 122.

tion, and authority not unlike to our parlements; which time, and power hath changed.

In Denmarke, Poland, Ruffia, and all those other parts of the world, the princes and states have their severall, and distinct councells.

^c The emperor of Germany hath his secret counsell, chosen by him out of his court counsell, with which this author was much offended; stiling it ^d monstrous, horrid, without forme, huge, without law or manners, intruded on them.

He hath besides, the counsell of the electors, and other princes, his great counsell; and besides his counsell of warre, and for severall provinces, the supream counsell not unlike our parlement, the dyette.

Butt sense and reason hath ledde all people, to the use of severall counsell. I shall not therefore need to be more perticular heerin: butt in regard of the excellent methode, and the ease it gives their king, I shall sett downe the formes of the swedish counsell.

I. Counsell they call the colledge of justice, the president wherof is the chiefe justice of Sweden, much like the antient chiefe justice of England, with four or five senators and a few others joyned with him, as his assessors. Their buisnes is to oversee the administration of justice, to receive the last legall appeals, to see, that right be done to all according to law, and that the course of justice have its due current. And the chiefe justice is the first rick's officer, that is

^c Lib. de ratione status, p. 392. Concilium sanctius et secretius. Der Reherliche geheime Raht.

^d Monstrum, horrendum informe ingens, sine legibus, &c.

the kingdome's officer, called by them ricks drutfet, that is the kingdome's doer of right. And this councell they call the hoff-ratt, the fupreame judicatory, for caufes fubject to the cognifance of the king, whence it is called ^e regium judicium, the king's judgement; and is in place of an antient judicatorie which they called the king's bench, or the ^f named judges of the king, in which (as in our king's bench) the king himfelfe ufed to fitt; and from thence there was no appeale. In criminall caufes, and treafons, heer is the laft provocation; and from judgements in inferiour judicatories, uppon a fum of money firft depofited by the appellant.

2. Councell they call the colledge of warre, in which the rick's marfhall or feldt here, that is the lord of the field or generall of the army, is prefident, with fome of the fenators and others his affociates military men; with the generall of the watches and armes, and their under officers attending.

To this councell belongs the infpection of all the militia, of the marching and ftanding forces throughout the kingdome, and of all matters belonging to the warre, men, ammunition, armes, mufters, wages, provifions, and other matters belonging to the warre, the campe and fortifications. To this councell is the laft appeale in all matters touching the foldiery.

3. Councell they call the colledge of the admiralty, where the ricks-admirall is prefident, with affeffors of the fenators and others experienced in navall affayres. To them belongs the care of all the fhippes of warre, either in a fleet or feperate, to have an account of all fhippes great and fmalle, to take care for building, furnifhing,

^e Loccennius.^f Tribunal regium konungs namd.

repayring, and rigging of them : and for armes, ammunition, provision, and all things necessary for the navy, they advise, and give the king, an account therof. And they determine all differences among the seamen, by way of appeal from the inferiour officers, in matters relating to the navy.

4. Councell is the colledge of the chancery, wherof the ricks chancellor is the president, with assessors, the chancellor of the king's court and two secretaries of state, of the nobility. To this councell have relation all the secretaries, in the nature of masters of the chancery ; one for domestick or swedish affayres, another for the affayres of Finland and Livonia, another for Germany and communications with forein princes, another for consultations, another for revisions, others as referendaries to peruse proceedings of inferiour courts, and to state the matter uppon a review for the judgement of the king, or his delegates. Hence issues the legall ordinary proces : decrees, statutes and ordinances are heer drawne and prepared, priviledges and instructions signed, pacifications, leagues, ambassies, instructions, and commissions for all forein publick ministers, are heere framed, confirmed, sealed and recorded ; and heer are all consultations touching forein negotiations, of which matters the chancellor hath the speciall care and oversight, and so it was antiently with the chancellor of England. Heer are also framed, sealed and inrolled, all grants, priviledges, patents, creations and commissions.

5. Councell is the colledge of the treasury, where the president is the rick's schatz-mister, or treasurer, with his assessors. And they take care of the whole buisnes of the revenew, the collecting and bringing of it in, and the disbursing of it according to the king's warrant. Under their inspection are all officers of the revenue, and

of

of the mints ; and they determine differences about the king's boores, and tenants.

6. Councell, lately added, is the colledge of trade, with a president and assessors ; whose buisnes is to advance the commerce of the kingdome, and therin to advise the king. Who hath this ease and benefit by these counsell, that when any petition is presented to him, he referres it to that colledge which hath the cognisance of the matters therin conteyned, who commonly determine the same ; or so examine and prepare it for the king, that he hath little trouble to answer it.

There is also the heredagh, in nature of our great counsell ; and lastly, the ricksdagh, of no smalle resemblance to our parlement.

For some great and weighty affayres.

TH E writt declares the occasion of summoning the parlement,^a for great and weighty affayres; difficulte and preffing, of a generall concernement, and of an high consequence, and therefore fitt for the advice of a publique councill: that where all are concerned, all may be consulted, and give a generall determination. One^b describing our parlement faith, that the kings used to call them, as often as it was needfull to consult about the great and weighty affayres; that the commonwealth might receive no prejudice. My lord Ellesmere^c agrees heerin; that when the king sees great and urgent occasions, he useth to call his parlement. And the very frame of the writ doth sufficiently testify it, and therin, the wisdom of the king, and his privy councill, not to take upon themselves the resolution of those great and weighty affayres, without the common advice and assent of the nobles, and of the people's deputies; whose assistance, both in advice and authority, they require and esteem necessary, in matters of this nature.

And heerin they follow that great example of wise government, that excellent patterne Moses; whose power and authority over the Israelites was absolute, and supream, by the appointment of God who was pleased also to inable him for the execution therof. 1. In religious matters^d; the israelitish woman's son that blasphemed, being brought to him, he caused to be putt in ward, inquires of God, and

^a Pro quibusdam arduis et urgentibus negotiis.

Quoties de rebus arduis, ne quid detrimenti capiat, consultandum.

postnati, f. 110.

^b Coke, Epist. 9 Rep.

^c Case of the

^d Levit. xxiv. 11, 12, 13, 14, 15.

declares

declares his mind, and the blasphemers were stoned to death; and that punishment enacted as a law against blasphemers. ^e He from God also, gave the commaund touching uncleane persons to be putt out of the campe^f; and about the keeping of the passover, ^g which was by him declared in the institution of it in Aegipt. [†] Also the law of idolatry, and that of the sabaoth, and of the tabernacle, the offerings, sacrifices, ceremonies, altars, and the like: the law was from God, delivered to the people by Moses. ^h He likewise punished the idolatry to the molten calfe, burnt it, cast the powder of it uppon the water; and made the children of Israel to drinke of it, and 3000 of them to be slaine by their brethren. 2. His power in civill matters, appears in the lawes promulgated by him in his bookes of Exodus, Leviticus, Numbers; and in ⁱ his sitting to judge the people: and when he had constituted judges under him, by the advice of his father in law Jethroe, yett the hard causes were resolved by him. 3. His power in military matters, appears ^k where he directs the people to incampe before Pihahiroth; and where he encourageth the people. “Feare not, stand still, and see the salvation of the Lord;” and where he commaunds Joshua, “^l chuse us out men, and goe and fight with Amalek;” and ^m where he appoints the incamping of the severall tribes, the number of warriours, order of marching, of alarums, &c.

Notwithstanding this power, and ability given to him from God; yett Moses growes weary of this power, and with more than ordinary earnestnes, intreats of the Lord ⁿ to give him assistance; he not

^e Ibid. et Num. v. 2.

^f Num. ix. 6.

^g Exod. xii. 3.

[†] Exod. xxii. 20. and xxiii. 13, &c. and xx. and xxiii. 12. and xxxi. 12. and xxxv.

2. Exod. xx, xxi, xxii, xxiii, &c.

^h Exod. xxxii. 19, 20, 26, 27, 28.

ⁱ Exod. xviii. 13, 16.

^k Exod. xiv. 2, 13.

^l Exod. xvii. 9, 10.

^m Num. c. ii. &c. i. ver. 10.

ⁿ Num. c. xi.

being

being able (as he complains) to beare the burden of the people alone. If Moses were not sufficient for these things, who is? God was pleased to give him assistants, and to institute the great sanhedrim to be his counsellors: and uppon his desire, they are added to him in the government; which being before in Moses solely, is now (saith Menochius) mixed with aristocracy, by their adjunction in government, in the most weighty matters.

° Schiccardus agrees heerin, that it became by the addition of this council, not absolutely monarchicall, butt mixt with aristocracy.

° Bertram holds they were instituted for the ease of Moses in his government; and seem to have had cognisance in the greater matters. And (saith Menochius⁹) this colledge of 70 men seemes to have bin almost equal in power with Moses, and to have cognisance of the greater causes; else Moses had felt no ease of his great burden. Butt Schiccardus^r affirmes of their great senate, that they had cognisance chiefly^s of the great matters, as our parlement hath. And this example of Moses was imitated not only by our kings, † butt universally by all nations, who in the great and weighty affayres of the commonwealth, consulted with their generall and publique counsellors. Aristotle saith heerof; † we take counsell of things wherof

° P. 92. Non absolute monarchicus, sed cum aristocratico mixtus.

° Bertram, de rep. judaic. p. 63.

° De repub. Hebraeor. lib. i. col. 3.

° Jus reg. Hebraeor. p. 9.

° Maimon. c. v. p. 7. de rebus magnis.

† 'Οι γὰρ βασιλεῖς αὐτοὶ προέλοιπον ἀνέγγελλον τῷ δήμῳ. Homer.

† De mor. lib. iii.

p. 39. There seems to be some omission in this place. The passage quoted is, in the fifth chapter of the 3d book, which treats of matters concerning which we advise, and of advice or council; also concerning matters of election or choice; and that choice is a rational or advised appetite of things relating to ourselves. The causes recited by Mr.

Whitelock,

wherof there be no other causes but nature, necessity, and fortune. And that in great matters we use counsellors, distrusting ourselves as unable solely to suffice, to discern, then are the publique counsellors to beare part of the burden, nor is it any disparagement to the wisest princes in such matters to make use of counsellors, as Moses did, and the philosopher adviseth such counsellors to judge according to rules, and lawes, which will be found much better both for prince and people, then any arbitrary proceedings. The senate instituted by Solon, is said * to have power of all things which were of great moment; and the like of the roman † senate; and the perticulars, and matters of great and weighty concernement in their power, are recited.

So it is related by Tacitus ‡, that of the greater matters all did consulte (that is their publique counsellors) in Germany: and that

Whitelock, are out of our power, and mentioned by Aristotle as matters on which men do not advise. The text of Aristotle warrants our reading it as follows:

“ We advise or deliberate concerning things relating to ourselves, and wrought by us.—Causes (*efficient*) seem to be, nature, necessity, and luck; also reason, and whatsoever is performed by man: and amongst men, each advises concerning what is wrought by himself.—Council is in things which, for the most part, happen, and are not manifest how they will terminate; and also in matters undefined. Therefore in great affairs we take *united counsel*, not trusting to ourselves, as not being sufficient to distinguish therein.” Βελενόμεθα δὲ περὶ τῶν ἐφ’ ἡμῖν πρακτῶν.—“ Αἰτία δοκῆσιν εἶναι, φύσις καὶ ἀνάγκη, καὶ τύχη, ἔτι δὲ νῆς καὶ πᾶν τὸ δι’ ἀνθρώπου. Τῶν δ’ ἀνθρώπων ἕκαστοι βουλευονται περὶ τῶν δι’ αὐτῶν πρακτῶν.—Τὸ βουλευέσθαι δὲ ἐν τοῖς ὡς ἐπιπολὺ, ἀδήλοῖς δὲ πῶς ἀποβήσεται, καὶ ἐν οἷς ἀδιόριστον. “ συμβούλους δὲ παραλαμβάνομεν εἰς τὰ μεγάλα, ἀπιστῦντες ἡμῖν αὐτοῖς ὡς οὐκ ἱκανοῖς διαγνῶναι.” (M)

† Gothofred. lib. ii. p. 699.—Majoris momenti.

‡ Rosinus, de antiquit.

Rom. p. 280.

‡ De mor. Germanor.—De majoribus omnes.

in all times their consultations were about matters of the greatest weight and importance, appears by those who write of them.

It was thus likewise in the most antient and later generall publique counsellis of the French. The Druydes are related to have mett in dietts, and generall counsellis, ^y and to doe right universally to the Gauls. And that for the dispatch of the affayres of greatest importance, and which were of greatest concernement to Gaul, they used to hold their diettes, or generall counsellis.

^z Thuanus reports that, in those generall counsellis, they acted [†] concerning the necessities and inconveniences of the kingdome. And ^a Lupanus informes us, that their auncestors, being to consult about any great and weighty matters concerning the commonwealth, used to call the three estates: and they used to meet ^b when any difficult and weighty matter was to be treated on.

Du Haillan describes the power and authority of the first parlements in France to be, ^c that there were decided all the affayres of consequence, and importance to the kingdome. And although it hath bin alike practised in Denmarke, Sweden, Poland, and in those and other parts of the world generally, to call assemblies of the people's deputies, and of the nobles, to consult together about matters of great weight and importance; as may be found by the perusall of their stories, and is consonant to reason as

^y Pasquier, recherches de la France, f. 7. — Universellement aux Gaulois.

^z Lib. xxvii. De regni necessitatibus ac incommoditatibus. [†] Quære, asked?

(M) ^a Lib. ii. f. 453. ^b Thuanus, lib. xxxiv. f. 205. — Aliquod arduum tractandum.

^c De l'estat des affaires de France, f. 180. — Se decidoient tous les affaires qui importoyent de quelque consequence au royaume,

well as the universall practise in all countries. Yett it is not to be denied, butt that such counsell have admitted of some ebbings and flowings of their authority and powers, according as exigencies have bin; and where the disability of a prince, thorough minority or otherwayes, wanting power, or meeting with too strong opposites or common violence, hath bin constrained to abandon some of his own rights, and the councill hath grasped too much: yett for great and weighty matters, surely such advice will be found best and safest.

During the same king's minority, order was also taken by the parliament, to examine the revenues, and to survey the king's moveables. The like order was taken by parliament, which I omit particularly to recite, touching the persons, estates, and education of our kings H. 6. and E. 6. in their minorities; and which are to be found in the records of the beginning of their reigns: as also in the histories of those and of others of our kings of England, when they were under age.

Concerning us.

MATTERS to be treated on in parlement, doe generally concerne the king; as they concerne the kingdome, wherof he is the head. But some may be said more personally to concerne him, and his family, and posterity, than others: as matters concerning the education of a prince when under age, wherof are many instances in our records; as ^a where the archbishop of Canterbury, before the king and lords in parlement, beseeched, that the king might be virtuously brought up in his youth, and have good counsell; and the temporall lords wished for the like bringing up of the king in virtue. And the commons had before ^b petitioned, that their names might be known who should be about the king's person, bringing him up in virtue: and ^c counsellors for the king, are appointed.

During the same king's minority ^d, order was also taken by the parlement, to examine the revenews, and to survey the king's moveables. The like order was taken by parlement, which I omit particularly to recite, touching the persons, estates, and education of our kings H. 6. and E. 6. in their minorities; and which are to be found in the records of the beginning of their reignes: as also in the histories of those and of others of our kings of England, when they were under age.

^a 2 R. 2. rot. parl. n. 27, 28.

^b 1 R. 2. rot. parl. n. 19.

^c N. 22.

^d 2 R. 2. rot. parl. n. 11.

In the act of resumption^e by H. 4. the parlement takes care, that no grants to the queen, or to any of the king's sons, shall be impeached. ^f Another confirmation by parlement of the queen's dowrey. ^z The like in the time of E. 4. ^b In R. 2. time, the commons petition concerning the queen's gould. ⁱ And in E. 4. time, the parlement went so farre as to make a provision for mother Cob, the queen's midwife. Butt these matters are not necessary to take up much of our time.

The parlement have taken care of the king's wives, and of their children. As ^k when they recommended to H. 4. the persons of the queen, the prince, the Lords Thomas, John, and Humphrey the king's sons; and pray their advancement: for which the king thanketh them, and promiseth satisfaction. And the same was done ^l by them two years after. So the commons prayed, ^m that the king's grandchild might be made prince of Wales, as his father was; wherein the lords promised to be mediators to the king. ⁿ And the like request was made for Henry son of H. 4. who was accordingly created prince of Wales in full parlement. ^o In the following parlement they take care of the queen and her daughters. ^p The confirmation of Edward, the son of king H. 6. to be prince of Wales, is by the lords and commons in parlement: ^q and they take order touching his maintenance. ^r The like creation of E. 4. his son, to be prince of Wales, is.

^e 6 H. 4. Rot. parl. n. 22. ^f 25 H. 6. Rot. parl. n. 15. ^z 8 E. 4. Rot. parl. n. 31.
^b 7 R. 2. Rot. parl. n. 61. ⁱ 13 E. 4. Rot. parl. n. 14.
^k 11 H. 4. Rot. parl. n. 44. ^l 13 H. 4. Rot. parl. n. 27.
^m 50 E. 3. Rot. parl. n. 41. ⁿ 1 H. 4. Rot. parl. n. 72. ^o 5 H. 4. Rot. parl. n. 31.
^p 31 H. 6. Rot. parl. n. 47. ^q 33 H. 6. Rot. parl. n. 52.
^r 12 E. 4. Rot. parl. n. 12.

The creation of the son of H. 7. was also in parlement, to be prince of Wales. And in some of our memories^s, the creation of prince Henry, eldest son of our late king James, was in the parlement. The parlement also frequently made orders touching the expences of the king's house, and his servants, and of the imbeziling^u of his goods, and the like. And in this king's reigne,^w the commons desire the king would hold them excused, for that report was made, that they had talked of the king's person otherwise than them beseemed; which was untrue: and so the king by answear took the same.

It is likewise an usuall thing for parlements, and publique coun-cells, to treat concerning the marryages of their princes, and their children; and the same to be required of them, as our antient, and later histories affirme.

^x King Leyr is said to have advised with his peeres, about the marriage of his two daughters, heirs to the crowne. And Octavius king of the Brittons, advised^y with his counsellors about the maryage of his daughter, to whom he should in marryage give her and the crown: and by their advice, she was maryed to Maximinian, a roman senator discended of the brittish royall bloud^z, who with her injoyed the crown, as was decreed by the peeres.

Ethelstan, the faxon king, advised^a with an assembly of the peeres, about the maryage of his sister to the king of France.

^s 8 Ja. Rot. parl. part 9. n. 17.

^t 5 H. 4. Rot. parl. n. 33.

^u 1 H. 4. Rot. parl. n. 126.

^w 8 H. 4. Rot. parl. n. 14.

^x Galfr.

Mon, Pontic. Verunnus, Fabian, Holinshed, Grafton.

^y Quaesivit à con-

filiariis.

^z Decreverunt ut sibi regnum, cum puellâ concederetur.

^a Malmesb. lib. ii. c. 6.—In conventu procerum.

H. 3. about the marryage of his sifter Ifabel to the emperor, advised^b with the bishops, and great men of his kingdome; by whose advice, the lady was given in marryage to Frederick the emperor.

E. 3. advised with his parlement^c, whither they held it best to treat with the French by way of amitie, or marryage: the commons thinke by way of marryage to be the best; and some of the lords are appointed to treat thereof.

^dIn H. 6. time, the chancellor shoves to the parlement, how through the great travaile of the earle of Suffolke, and other noble-men, a marryage for the king was contracted; which the commons^e especially commended.

^fIn a petition of the commons to R. 3. is sayd, that the marryage betwixt king Edward, and Elizabeth Grey, was made of great praesumption; without the knowing, and assent of the lords of the land.

^gThe marryage of H. 8. and his queen Katherine, was dissolved by act of parlement.

^hThe marryage of queen Mary, was assented unto by parlement, with some conditions.

ⁱIn the beginning of our queen Elizabeth's reign, the commons moved her to marry, as a thing which the kingdome infinitely

^b Mat. Paris, p. 414. 30.—Cum episcopis et suis regni magnatibus.

^c 5 E. 3. Rot. parl. n. 3.

^d 32 H. 6. Rot. parl. n. 2.

^e N. 8.

^f 1 R. 3. Rot. parl.

^g Stat. 24 H. 8.

^h 1 Ma.

ⁱ Camb-

den's Annales of queen Elizabeth, f. 196.

desired: seeing they could never hope to have better kings than out of her loynes; that princes ought to take care, that though themselves be mortall, yett the commonwealth may continue immortal; and that the kings of England have never bin more carefull, than that the royall family might not fail of issue.

The queen answered. "In a matter most unpleasing, most pleasing to me is the apparent good will of you, and my people. She tells them of her cares, which would be multiplied by marriage; that she was married already to the kingdome of England; and shoves the ring of her coronation; and faith, every englishman is my child; and resolves to live and dye a virgin." In the ninth year of her reign, the parlement tooke the same againe into consideration, and pressed the queen again to marry. Butt she, to a committee, reproved some unfitting speeches which had passed in the house about this matter, and diverted it. To the propofalls of her marriage with the duke of Anjou, she answered, that she would assent, if the estates of the kingdome should so thinke fitt.

Lastly, the marriage of our king Charles 2. received much discussion in the parlement.

And as they frequently treated concerning the marriages of their princes and their children; so the parlement likewise ordered matters of succession: as in the cases of king Leyr, and Octavius, before remembred, wherein the succession was orderedⁱ by common assent. The nobles and commons^k opposed the succession of Edwin in Northumberland, uppon a good ground; that it was against

ⁱ Communi assensu.

^k Spelman. concil. p. 112. et Galfr. Monum.—

Contra jus veterumque traditionem, insulam unius coronae, duobus coronatis submitti.

right, and the tradition of the elders, that an island of one crowne, should be submitted unto two crowned princes."

¹ The councell of Calcuth, under Ofwold and Offa, ordeins what persons shall be admitted to the regall succession.

^m The councell ordered Edward the son of Edgar to succeed his father. So was Cnuteⁿ, by the generall councell, declared successor to Edmond Ironside. And after the death of Hardi Cnute without issue, ^o all the great men of England by common councell decreed, that no Dane, from thenceforth, should ever reigne over them: and they declared Edward the confessor to the succession.

So were W. Rufus and H. 1. admitted to the succession. King John resigned his crown to the pope's legate, and tooke it againe from him as his feudatary. Butt the barons told the legate, that England never was, is, or should be the pope's patrimony. And it was enacted uppon that occasion, afterwards in E. 3. time, ^p that no king could bring the realme in such subjection and thraldome, butt by common assent in parlement; which was not done in the case of king John, butt what he did was against his oath: and if the pope should attempt any thing heeruppon, that the king and his subjects should resist the same.

^q Of the same judgement is the law of France, that the king cannot quit a patrimoniall right, no more than he can resigne his king-

¹ Spelman. Concil. p. 291.

^m Ingulphus, Malmesb. Huntingdon.

ⁿ Brompton, Speed, Foxe.

^o Omnes Anglorum magnates de communi concilio statuerunt.

^p 40 E. 3. Rot. parl. n. 7, 8, 9.

^q Haillan, f. 312. a.

Un roy ne peut quitter un droit, non plus que resigner son royaume à un autre.

dome to another: ^r and that a king cannot dispose of his kingdome without the consent of his barons.

So it is said in our law bookes ^s, in the case of H. 6. to the duke of Yorke: butt the lords in parlement ordered that succession, as in the rolle ^t appeareth.

^u An act of parlement declares the succession to the crown in H. 8. and to his sons and daughters successively. And another ^w act reciting it, gives power to the king by his letters patents under the great seale, or by his will, to appoint his successor.

^x By an act of queen Mary, that of her father touching the succession is confirmed: ^y and the like was done by her husband, as to the succession in Castile.

^z Queen Elizabeth declared it high treason for any to affirme, that the lawes and statutes could not define, and declare, and bind the right of the crown, and the succession. Scotland agreed with France, ^a that they should defend his succession, to whom the estates of Scotland should adjudge the kingdome.

The like acts as to marriages, and succession of their princes, are obvious in the stories of other kingdomes, to have bin made by their publique councells; which to recite perticularly, would too much increase this volume.

^r Moulin. — Un roy ne peut donner son royaume. ^s P. 13 Ja. B. R. f.

15, 16.

^t 39 H. 6. Rot. parl. n. 10.

^u Stat. 25 H. 8. c. xxii.

^w Stat. 28 H. 8. c. vii.

^x Stat. 1 Ma. c. i.

^y Thuanus, lib. xxiii. f.

483.

^z Cambd. Annales, f. 204.

^a Ibid. f. 122. — Eum defende-

rent cui Scotiæ ordines regnum adjudicarent.

The state.

THE state of the kingdome of England may be considered, either in relation to the present condition of it; or to the generall and constant state, and condition of it: both are proper for our occasion.

The present condition and state of England (blessed be God) is restored wonderfully to peace, and settlement; and rescued from sharpe and bloudy civill warres, from the worst and most miserable state of civill dissention, unto the best and most flourishing state, a full and blessed peace. It will not, I hope, be thought impertinent, a little to discourse of both these states; and first of the calamitous state of civill warre, wherby our hearts may be the more rayfed up in thankfulness to God, by whose immediate hand, and immense free mercy, hath bin wrought all our deliverance.

^a Tacitus gives his censure against civill warres, that they can neither be prepared for, nor undertaken by lawfull means. And Plutarch holds ^b, that both the parties conquering and conquered doe wrong unto their countrey. Of those of Caesar Suetonius saith ^c; that “ he never gained so much by a victory, as that the calamity attending it, could be recompenced.”

Civill discord had an early beginning in the world ^d. When there were butt two brethren uppon the earth; one of them, Cain, rose up against Abel his brother, and slew him.

^a Lib. viii.—Neque parari possunt neque haberi per bonas artes.

Othon.—Patriae injuriam afficiunt.
posset.

^d Gen. iv. 8.

^c Cap. vi.—Quantum auferre calamitas

^e With brother's blood are the first walled
Distained; of two, there's one that falls.

From hence it spread into the family of good Abraham, of Isaac, and of Jacob; and indeede tooke deep roote, and spread itselſe univerſally. We reade of no nation, which hath not bin under the ſad calamities of it.

The people of Iſrael were not exempt from it. ^f There was warre between the houſe of Saul, and the houſe of David; ^g and between Rehoboam, and Jeroboam, all their dayes ^h; and between Aſa, and Baſha; and others.

The Babilonians, Affyrians, Medes, Perſians, Graecians, and all our later and neighbour nations, have lyen under this great judgement. Thoſe of the Romans att Pharfalia, are heroically related by their poet ⁱ, and as well engliſhed by Tho. May.

Warres more than civill on Æmathian plains,
We ſing; rage licens'd, where great Rome diſtains
In her own bowells, her victorious ſwords, &c.
—— No ſword could reach ſo farre,
Deepe pierce the wounds received in civill warre.

The miſeries of civill diſſention have bin early, and often layd upon this nation, as a puniſhment for our ſins. ^k We reade of

^e Lucan. Fraterno primi maduerunt ſanguine muri.

^f 2 Sam. iii. 1.

^g 1 Ki. xiv. 13.

^h 1 Ki. xv. 6, 7, 16, 32.

ⁱ Lucan. Bella per Æmathios pluſquam civilia campos,
Juſque datum ſcleri canimus, &c.

^k Pontius Verunnus. — Galf. Mon.

them in the time of Brute's children, and of the brittish king Leyr; and often in the reign of their british successors; and of the great and bloody civill warres, in the reigns of many of our saxon princes, to the last of them Edward the confessor, with earle Godwin and his complices; and the cruelties exercised by them.

After the time of duke William, our stories mention those in H. 2. time; the barons warres in the times of king John and H. 3. touching confirmation of lawes, and liberties; those between the two houses of Yorke and Lancaster, whether an Edward or a Henry should be king; and when either party prevayled, all was quiett whilest his power lasted. Butt beyond all, were our late civill distractions, when the flames burned a long time without intermission; and had consumed us to nothing, had not our mercifull God interposed his deliverance.

Petrarch sayth, " ' that in civill warre the commonwealth is att the last gaspe : " so was England, and neere to that observation of the duke de Rohan^m, who saith, that England is a great creature which can never dye, unlesse it kill itselfe. To doe this, England laboured with all its might, many years together; when

Brother's blood did feed the civill strife;
And he, that gave, bereft his child of life.

It is truely noted, " that there is not a mischiefe more miserable, nor more shamefull; a sea of infoelicities! not properly a warre, butt a malady of the state, a fiery sickness and frenzy! the authors

¹ Respublica in extremo est.
jamais mourir s'il ne se tue luy mesme.

^m P. 294.—Est un grand animal, qui ne peut

^a Charron, de sagesse.

wherof

wherof deserve to be putt out from the number of men, and banished out of the borders of humane kind, as causers of all wickednes, impiety, and cruelty; and that even between head and members, parents and children, brothers and brothers; no relation, age, or dignity protecting any man; ° the nobility perish with the common people; and the sword wanders farre and neere, greedy or mercenary in all evill.

For the actors (as I have seen) the inferior and baser sort are companions with the best. Caesar (saith one) was both my captain, and companion on the river Rhine. They are indeed ^p all fellow-soldiers: ^q those whom mischief defileth it maketh equalls; and which is more, yett as true, ^r their leaders not daring to prohibite what they dislike. Oh! 'tis nothing else butt misery, a poyson that consumeth humanity! the Lord keep us, that the voice therof may no more be heard within our habitations.

From this contagion the Lord was pleased to recover England; and to bestow, in our present state, a full and blessed peace upon us, which we now enjoy: and may it be enjoyed in this land, till time shall be no more. ^s Our God hath made peace within our borders, and given us plenty; filled us with the finest of the wheate; ^t favoured us with peace within our walles, and prosperity within our palaces. How ought we to blest his name, who hath thus redeemed us! to endeavour meekly and piously the preservation of our peace, and of unity amongst us! to forgett all former injuries, to lay aside all rancor, and to forgive as we pray to be forgiven! The

° Nobilitas cum plebe perit.

^p Commilitones.

^q Facinus quos

iniquat aequat.

^r Obnoxiiis ducibus, et prohibere non ausis.

^s Ps.

cxlvii. 14.

^t Ps. cxxii. 7.

hebrew word ^u for peace signifies also tranquillitie, safety, and all kind of prosperity and happinefs the companions of it.

^w St. Augustin commends peace for such a good, that in created things there is none more gracious to be heard of, none more pleasing to be desired, and none more profitable to be enjoyed.

^x Cassiodore affirmes, that heerin the grace of a king is extolled, if he governe his people in the equity of peace. Hence our king James tooke his motto. “^y Blessed are the peace-makers; and the reason therof is given, ^z for they shall be called the children of God.”

^a The orator saith: “If we consider all things which are pleasing and gratefull to men; ^b nothing is so popular as peace.” Wherof the poet sings.

“^c Peace the full worke of virtue is, of all
Our labours the wisht end, which we may call
The price of warre and daunger; the bright skies
And earth flourish in peace. No sacrifice
Or ought else pleaseth God, unles it be
Perform'd in peace, and soul's serenitie.”

Butt there needs not other authorities, where the holy text is so full as uppon this subject: and one, who hath bin too much conversant in our late troubles, may hope for pardon, if he cannot soon leave off his just admiration of this blessing of peace.

^u שלם ^w De civitat. Dei.—Nihil gratiosius solet audiri, nil delectabilius concupisci, et nil utilius possideri. ^x Lib. i. Epist.—Si in aequitate pacis populum dirigat. ^y Beati pacifici. ^z Mat. v. 9. ^a Cicer. pro lege agrar. ^b Nihil tam popolare quam pacem. ^c Pax plenum virtutis opus.

In the annunciation of happines to the world by the birth of our saviour, the hallelujah, proclaimed by the heavenly host^d is, "Glory be to God in the highest, and on earth peace, good will towards men." The blessing, promised to David^e, is, that uppon him, and his seed, and his house, and throne, shall be peace for ever from the Lord. Of his son Solomon God saith, "I will give peace and quietnes to Israel in his days." The psalmist assures us, "that the Lord will blesse his people with peace." The way, to have peace, is to gett an interest in the God of peace; to be his people, and then he will blesse us with peace: he will speake peace to his people, and to his saints. And the like expressions are in many other texts^h. Also in many placesⁱ the Lord is pleased to stile himselfe the God of peace. And it is a great injunction to all God's people, to seek peace and pursue it: and of wisdom, which is Christ, the wise man saith, "How beautifull uppon the mountaines are the feet of him, that bringeth good tidings," that publisheth peace. Some doe affirme, that there was an universall peace in the world, in the time of Augustus, when our saviour was borne. So the prophets^k declare it as a generall blessing to the world, uppon the comming of his kingdome, "that they shall beate their swords into ploughshares, and their speares into pruning hookes; nation shall not lift up sword against nation, neither shall they learne warre any more."

^d Luke ii. 14. ^e 1 Ki. ii. 33. ^f 1 Chron. xxii. 9. ^g Ps. xxix. 11. and lxxxv. 8. and cxxv. 5. and cxxviii. 6. and cxliii. 14. ^h Pro. iii. 17.—Isa. xxxii. 18. and lx. 17. and lxvi. 12.—Jer. xiv. 13.—Hag. i. 9.—Lu. i. 7. ⁱ Rom. xv. 33. and xvi. 20.—2 Cor. xiii. 11.—Phil. iv. 9.—Thes. v. 23.—Heb. xiii. 20.—Psal. xxxiv. 14.—Pro. iii. 17.—Isa. lii. 7. ^k Isa. ii. 4.—Mic. iv. 3.

Thus when all things were wearied, with civill discord, the God of mercy appeared for our rescue, and brings us peace; which wee all desired, who are any way worthy of it.

^m O blessed peace, by all thou art desir'd;

Butt most by those whom civill war hath tir'd.

May those rott, who shall goe about to renew our discords, or disturbe our peace! The constant, domestick, civill state of the kingdome, to be considered by the parlement, consisteth chiefly in these two things, the preservation of the peace, and the promoting of trade. The preservation of peace consists in the due administration of justice; which is of two sorts, distributive justice, and commutative justice. ⁿ Distributive justice hath, for its object, good and evill; for its end, reward and punishment: and ^o commutative justice hath, for its object, matter of property; and for its end, to give every one his due. These matters are proper for the parlement's consultation and action, who are governors sent by God ^p, for the punishment of evil doers, and for the praise of them that doe well: and it is their care to see, that all the magistrates be such, and to remove those which are not. They are also to see that property be preserved; that to all ^q be rendred their dues: that such judges, justices, and officers, as are sett over the people, be according to the counsell of Jethro ^r, able men, such as fear God, men of trueth, hating covetousness; and whom they find otherwise, to pray the

¹ Tacitus.—Cuncta discordiis civilibus fessa. ^m Pacem te poscimus omnes.

ⁿ Justitia distributiva—bonum et malum, praemium et poena.

^o Justitia

commutativa—meum et tuum, suum cuique tribuere.

^p 1 Pet. ii. 14.

^q Rom. xiii. 7.

^r Exod. xviii. 21.

king, that they may be removed, and fitt judges placed in their roomes. They have also power to punish any^s who judge for man, and not for the Lord; who respect persons, or take gifts, or any way misdemeane themselves in their offices. And whilest the course of justice is kept uncorrupt, whilest offenders are punished, and well-doers rewarded; when every one enjoyes his due right and property; it is a great means to preserve peace.

The other part of the domestick state of the kingdome, constantly to be taken care of by the parlement, is the promoting of trade; wherof, the wisdom of our auncestors had a very great regard; and for that end, so many cittizens and burgessees have place and vote in our parlements; wherof there will be occasion to discourse more perticularly heerafter, when the words of the writt bring me in my methode to those parties.

Certainly trade is the principall vitall of a civill commonwealth; especially of islanders, whose commerce by navigation must both vent their owne commodities, which they may spare; and import forein merchandises necessary for their use, or profitable to them in the way of traffique; and perticularly beneficiall to the state, in the breeding up and imployment of mariners, and increasing our shipping, our chiefeft outward strength; the which is much advanced, and the king's revenue in customes, by the encouragement of trade; and likewise the values of lands, and the rents of the owners of them are therby augmented.

• 2 Chron. xix. 6, 7.

Chiefly, our great trade and manufacture of clothing is to be regarded; wherein consists no small part of the riches of the kingdom; and all manufactures deserve encouragement; and the artificers are not to be contemned; nor the generous merchants, by whose knowledge of foreign countries and their adventures therunto, no small glory, strength, and riches are added to the nation.

the forces by land and sea, and the employment of them either in defensive or offensive wars, as there shall be occasion; and for the better strengthening of the state; to take care touching leagues, and peace with our neighbours.

Concerning the care of the forces, the levying and arraying of them, and principally touching the ships of war, and safeguard of the seas; for a parliament hath bin sitting, whose business hath not bin about these matters, as our records abundantly manifest.

The power of the militia of the kingdom hath bin a question too much disputed, and too much decided in all countries by itself. The law themselves sometimes clearer in that point, than in other times. But I am, it is a point too high for the discussion of my pen.

The constant old way of levying soldiers was by indenture; whereof there are great numbers yet remaining in the receipt of the king's treasury, to be seen in the tally office; and whereby the countie appears to have bin, that when the king had occasion so many soldiers, the noblemen and great men did severally covenant, by indenture with the king, to bring to him, to such a place, at such a time, as was agreed, such a number of horsemen or footmen to serve for so many years, at such wages, as in the indentures are specified. Then the noblemen in like manner cove-

C H A P. XVIII

And defence.

THE defence of the kingdome is indeed the proper buisnes of a parlement: and the wayes of defence are, to take care of the forces by land and sea, and the imployment of them either in defensive or offensive warre, as there shall be occasion; and for the better strengthning of the state; to take care touching leagues, and peace with our neighbours.

Concerning the care of the forces, the levying and arraying of them, and principally touching the ships of warre, and safeguard of the seas; scarce a parlement hath bin fitting, whose buisnes hath not bin about these matters, as our records abundantly manifest.

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nanted

nanted with severall gentlemen in their countryes; and the gentlemen with their tenants and retainers, untill their respective numbers were compleated: by which means the certainty of the numbers and expences was the better knowne; the king served by the better men; and the soldiers, going with their neighbours and countrey-men of interest with them, exprest the better courage and obedience.

Somewhat after this manner is the usage att this day in Sweden; where the standing forces, which are a very great body, are listed under the noblemen and gentlemen of the severall provinces, as their superiour and inferiour officers named by the king. And these officers agree in their countryes, with the inhabitants and boores, of whose sons and servants for the most part their companies are made up. These have a very smalle allowance from the crowne; and no constant pay, butt when they are drawne out into actual service. A boore is not obliged to take them to quarter in his house, butt uppon termes between them; which commonly are, if the horseman will worke himselfe and his horse with the boore, and the footman labour in the buisnes of his husbandry, the boore will give them man's meat and horse meat, their stove and their stable: otherwise, there is no quarter for them. And by this means the soldiers are kept from idlenes; and besides their allowance from the crowne, have their diett for their worke; and the boore hath their worke for their diet only: so the boore and the soldier both have a benefit by this way: and by these forces the kingdome is alwayes in a good posture of defence, att a smalle charge, and hath a full seminary of soldiers, out of which he can draw what numbers he pleases for his occasions beyond seas. Butt no man is compellable therunto, except it be enacted by their ricksdagh: as the law of England

England was as antient as E. 3.^a time; when it was enacted, that no man be compelled to goe out of his countey, except uppon the suddain comming of strange ennemies. Butt this is also a point above my quill. Certain it is, and evident by records and histories, that the kings of England, and of other countryes, have constantly in matters of warre, and peace, of leagues, and treaties, advised with their publique councells.

Our elder stories mention Brute, Belinus, and Brennus, Caffivelane, Arviragus, Vortigerne, Aurelius Ambrosius, and generally all the british, saxon, danish, norman, and other kings of this nation, as of all other countryes, who in matters of war have advised with their publique councells, as a safe and prudent course; the particulars wherof are too many to be recited. Such consultations touching the warres with Scotland, and in other countryes, and of those in France, are to be found in the rolles^b cited in the margent; wherby it will appear, that in all times of war, the advice of the parlement was therein required, and that by our best and wisest kings: and the same course continued constantly, even to our times. And it is noted, and not impertinently, that whensoever advice was taken in these matters of the publique councill; the designe undertaken by their

^a Stat. 1 E. 3. c. v. and 18 E. 3. c. vii. and 25 E. 3. c. viii. and 4 H. 4. c. xiii.

^b 6 E. 3. Rot. parl. n. 6. 50 E. 3. n. 2. 1 H. 4. n. 81. 8 H. 4. n. 2. 17 R. 2. n. 1. 1 H. 4. n. 9. 6 E. 3. Rot. parl. n. 1. 17 E. 3. n. 9. 18 E. 3. n. 8. 25 E. 3. n. 7. 42 E. 3. n. 7. 45 E. 3. n. 1. 47 E. 3. n. 2. 50 E. 3. n. 2. 51 E. 3. n. 12. 2 R. 2. n. 6, 19, 25. 3 R. 2. n. 5. 4 R. 2. n. 3. 6 R. 2. n. 7 R. 2. n. 3. 8 R. 2. n. 2. 9 R. 2. n. 4. 10 R. 2. n. 2. 11 R. 2. n. 1. 14 R. 2. n. 1. 15 R. 2. n. 2. 17 R. 2. n. 1. 2 H. 4. n. 12. 4 H. 4. n. 3. 6 H. 4. n. 3. 11 H. 4. n. 2. 2 H. 5. n. 5. 3 H. 5. n. 3. 4 H. 5. n. 3. 7 H. 5. n. 1. 14 H. 6. n. 2. 27 H. 6. n. 17. 29 H. 6. n. 1. 8 E. 4. n. 28. 14 E. 4. n. 18.

advice had much the better successe: and the reason therof is evident; bicause the designe and undertaking, being by common consent, gives the greater satisfaction to the people in generall, whose purses and persons are necessary for the assisting of those undertakings; and the actors therin will be the more ready, and diligent in their dueties.

For matter of peace considered by our parlements, the like instances are in our histories and records. As that between Belinus and the Danes, is said to be made, ^c the peeres being called together; who assented to it.

King Etheldred by the counsell of his chiefe men ^d made a peace with the Danes, and gave them the tribute ^e for the good of peace. The like was (again) done by him, the king and the senate of England ^f assenting to it.

Richard the first is said to make a peace with the king of Fraunce; ^g there being present the bishops, and great men, of both kingdomes, who assented to it.

^h In the peace between our king John and France, it was agreed, that if either king did breake it, his barons should be absolved of their fealty, and take part with the other.

The peace ⁱ between our king H. 3. and Lewis of France was by advice of their councells. That between E. 3. and Scotland ^k was

^c Galfr. Mon.—Convocatis proceribus. ^d Primates. ^e Pro bono pacis. ^f Rex et senatus Anglorum, &c. ^g An^o 1188. Mat. Paris, p. 156. 50.—Episcopis et magnatibus utriusque regni. ^h Houed. p. 765. an^o 1201. ⁱ An^o 1217. ^k 2 E. 3.

concluded by the parlement, att Northampton. And (that) between England and France¹ was proposed to the parlement, and a cause of the summoning therof declared to be, concerning the truce in Brittain: and it is sayd, that as the king attempted not the war without the parlement's assent; so without the same he would conclude no peace. Wheruppon the lords and commons severally gave their advice, that it was good to pursue the peace. And the like consultations^m, touching the same matter of peace, are in fundry other of the rolles.

The like may be found in our recordsⁿ touching matter of peace with Scotland, which was sometimes denied by the lords and commons, and sometimes by them assented to; as their wisdom, and judgements guided them. And there is very much of these matters in our records, and stories.

The like advice and determinations have bin in our publique councells, touching leagues, and treatyes. As our storyes mention the league between Brute and Pandrafus^o, by advice of his elders. And that of Arviragus with Claudius the emperor. Belinus, by advice of his publique councell, made the league with the king of Denmarke. So was the league between Octavius and the Romans^p, by the great men's advice in councell; and the league in king Arthur's time; and the like of the leagues made by the saxon princes.

¹ 5 E. 3. Rot. parl. n. 7. and 17 E. 3. n. 7. and n. 9. ^m 18 E. 3. Rot. parl. n. 6. and 20 E. 3. n. 2. 28 E. 3. n. 2. and n. 58. 29 E. 3. n. 5. ⁿ 43 E. 3. Rot. parl. n. 1, 2. 7 R. 2. n. 4. 13 R. 2. n. 1. 14 R. 2. n. 1. 17 R. 2. n. 1. 6 H. 4. n. 10. 3 H. 5. n. 14. 4 H. 5. n. 3. 14 H. 6. n. 1. 23 H. 6. n. 23. ^o Galfr. Mon.—Majores natu. ^p Magnates Britaniae.

The league between king John and the French, and his barons, was made ^a by common assent of all of them. And the Commons, having given ayd to R. 2. ^r do require, that if any league be taken with the enemy, the profit may be layd up, for the ease of the commons.

A league, between H. 5. and Sigismond king of the Romans^s, is confirmed by whole assent of parlement; and the instrument of this alliance is uppon record, in the rolles of this time.

A graunt was made by parlement, to the queen dowager^t, in pursuance of a league.

The league between the duke of Burgundy and the French, was considered by the parlement of H. 6^u. Likewise leagues between this king and E. 4, and Fraunce; and so constantly in the succeeding parlements, to our times.

Of the jewish publique councell, the sanhedrim, it is sayd, that they had cognisance of warre, of leagues, ambassadours, &c^w; butt it did not bind all without the consent of the sanhedrim. And the king, being to begin a war with any of his neighbours^x, was of necessity first to consult with the great senate, without whose consent the soldier was not to goe forth. And according to this, in expresse

^a Mat. Paris, p. 253. 7.—Communi assensu.

^r 5 R. 2. Rot. parl. n. 68.

⁶ R. 2. n. 9.

^s 4 H. 5. Rot. parl. n. 14.

^t 1 H. 6. Rot. parl. n. 40.

^u 1 H. 6. Rot. parl. n. 40. 23 H. 6. Rot. parl. n. 2. and 8 E. 4. n. 27.

^w Schiecardus. Jus reg. Hebr. c. Electio, p. 9. et Maimon. c. v. p. 7. Schiecard. c. bellum.—Invito synedryo, nec omnes obligabant.

^x Misn. Melach,

c. ii.—Necessario prius deliberabat cum magno senatu, citra cujus consensum miles non exibat.

termes, is the law of England: also that of Sweden, Germany, and most other countryes. For leagues, that of Joshua^r made with the Gibeonites was with consent of the princes of the congregation, who sware to it; and many other instances doe occurre in the holy story.

If any person or citty of Italy required helpe of the Romans^z, or support, the consideration therof was had by the senate. If any ambassy were to be sent forth on any occasion, or to denounce war, the senate was to provide for it; and how ambassadours comming to Rome should be intertained, and answered. And the like was done^a by the graecian senates. The like was in Germany^b, as att the diet of Ratisbone they decreed the castle of the Gothes to be demolished; and frequently determined matters of war and peace^c, restraint of the licentiousnes of the german soldiers, concerning militarie discipline, of publique peace, of the charges of the gothique war, of fortifying of towns, castles, and strong houlds, and the like.

The antient counsellors of the Netherlands^d exercised the like power, in matters of war, and peace: wherwith agrees another of their countrymen^e; and the present constant practice shews it. And they, together with the generall^f, determine of war, consider of money, provisions, armes, commaunders; and whither, how farre, when, and how they shall lead them: they heare ambassadors, make peace, confirme leagues, &c.

^r Jos. ix. 15.

^z Rosinus, de antiquit. Rom. p. 280.

^a Gothofred.

lib. ii. p. 699.

^b Thuanus, lib. vi. f. 131.

^c Ib. lib. xlv. f. 936.

^d Grotius de antiquitat. reipub. Bat. f. 35, 36, 42.

^e Paulus, p. 127, 128.

^f Bellum decernere, exercitus conscribere, conscriptis peritos animososque dare duces, &c. Legatos audire, pacem facere, foedera sancire, &c.

The three estates, in France, had the like power, and practise^r. They gave answears to ambassadours; and consulted about making of peace, or waging of war, sending of ambassadours, &c. levying of soldiers, correction of their abuses, and of all things necessary for the conservation and tranquillitie of the kingdome.

It were no difficult taske to find out many more instances on this subject, both in France and in all other countryes, of determinations by their publique councells of matters of war, peace, and leagues, and the publique defence; as things most agreeable to the nature, reason, and institution of such councells.

^r Pasquier, recherches, p. 42.—Donnoient responces aux ambassades. Lupanus, lib. ii. f. 453. Honorius de regn. Gall. f. 537.

Of our kingdome of England.

MA T T E R S concerning the king, and the state and defence of the kingdome of England, are most proper for the debate, advice, and determination of the parlement of England: they are such things as concerne all the people; and therefore fitt to be considered and resolved by the councell of all the people, their deputies, by whom all of them are represented in parlement. And they are the parlement of England only; and their acts are not binding in the kingdome of Scotland. And although (through the goodnes of God) both kingdomes are united under one head and soveraigne; yett the parlement of Scotland is a distinct and independent power, not subject to the parlement of England. And the question, of the superiority of the crown of England over Scotland, is better left undisputed, than discoursed on^a. So are those records in the tower of London in E. 1. time; who, having obtained great victories in Scotland, did exercise his regall power in many things in that kingdome, and caused matters of that kingdome to be determined in his parlement of England. Butt it lasted not long; the Scotts recovering their former powers and authorities. And doubtles, their parlements are as antient^b as their gouvernement, and much agreeable to that of England. Butt no law is of force to bind the subjects of Scotland, except it be enacted by the parlement there, with the royall assent of the king; the which he gives there as king of Scotland, and according to the lawes and usages of that nation.

^a Lib. apud turrim, et record. de statu regni Scotiae.
 Britan. legibus, c. vi. f. 16.

^b Lib. de antiquis

That the Gothes, and Danes, and northerne people, came into Scotland with their king Fergus the second^c, appears in their chronicles of that time; and in them is mention of a law made by Fera-thris 2, in the year before Christ 305, concerning the government of the kingdome by the next of kindred, in these words; "Gif the sons of the king departed were so zoung, that they could not rule; then the next of the kindred was to be preferred:" and this by an act of their publique councill of that antiquity. Their law booke (which some take to have bin a transcript of our book of Glanvill) informes us, ^d that all the barons graunted to the king wardship, and reliefe; and this was their parlement, and very antient. And in their printed statutes under king James the first^e, who reigned about 300 years since, it was enacted; "that the small barons, and free tenants, neid not to come to parlement, nor generall counsell; swa that of ilke shirefdome ther be send, chosen att the second head court of the shirefdome, twa or maa wise men, after the largenes of the shirefdome."

Butt I shall not need to travaile farre in this argument: all the histories, and records of that kingdome, doe abundantly satisfy for the antiquity, and independancy of their parlements; and to discourage much theruppon may seeme an injury to the rights of that nation.

For Ireland it is otherwise; that being a kingdome dependant and subordinate to the crown of England. And although, by the favour of our kings, they have their parlements within themselves: yett no act made in them is binding, untill it be supervised, and confirmed, by the king and his councill in England.

^c An^o 404.
concefferunt.

^d Regia majestas. Leg. Ma'colmi 2. c. i.—Omnes barones
^e Stat. 7 Ja. 1. c. ci.—Seld. Tit. hon. f. 848.

Some

Some suppose the parlement of Ireland to have begun in 17 E. 3. butt the contrary is made appear^f; and that king John, and his father H. 2. did commaund, that the lawes of England should be of force in Ireland; and that in king John's time a parlement was held there, as appears^g by a record in H. 3. time. And for the authority of the treatise^h called the manner of holding of parlements, (which some of as little learning do oppugne) our author saith, that H. 2. sent it into Ireland, to direct the holding of parlements there. H. 3. commaunded^k the lawes of England to be observed in Ireland. And sometimes the king of England called his nobles of Ireland, to come to his parlement of England: as when E. 2. commaunded Richard de Burgh earl of Ulster and other nobles of Ireland, to be att his parlement att Westminster; to treat there, with the peeres, &c. about the state of that land. He also holds, and it is not controverted, butt that, by speciall words, the parlement of England may bind the subjects of Ireland: as by the record before cited, and divers others it is evident. As where the king^m commaunds, which was by his parlement heere, that parlements shall be holden yearly in Ireland. And in another parlement att Nottinghamⁿ, ordinances were made for reformation of the state of Ireland: the like^o was in E. 3. time. And bicause the acts of parlement in England did not extend to Ireland, unlesse it were specially named, or by generall words included^p: an act was made att a parlement in Ireland, when Sir Edward Poynings was deputy there, that all statutes made in England should be of force in Ireland, and be confirmed there. This act was afterwards explained,

^f Coke, 4 Instit. p. 349.
tenendi parliamentum.

^g 18 H. 3. Rot. m. 17. n. 31.
ⁱ Co. 4 Instit. p. 12.

^h Modus

^k 30 H. 3. Rot. parl.

^l 8 E. 2. Rot. parl. n. 31.

^m 10 E. 2. Rot. parl. and rot. claus. m. 38.

ⁿ 17 E. 2. Rot. parl. 1 p^t. and rot. parl. m. 3.

^o 17 E. 3. Ordin. pro stat.

Hib.

^p Lib. Alb. in Scaccar. — 10 H. 7. Poynings's law.

in some doubtfull points therof^a, by an act in queen Marye's time. The manner of holding parlements was certified, uppon consultation^b, to be thus : 1. The lieutenant and councell of Ireland are to certify, under the great seale of Ireland, the cause, and considerations, of such acts as seem good to them to be past in Ireland. 2. They are to be affirmed, or altered, and returned under the great seale of England. 3. Licence under the great seale, here, to summon, and hold a parlement there. 4. To transmit billes, sitting the parlement, as before.

Although our writt of summons be for great affayres concerning the kingdome of England : yett Ireland, although it have a parlement of their owne, may be bound, by expresse words of an act of the parlement of England, or by generall words including the same.

The like was antiently of Wales, before the same was incorporated into England, and had the privilege of sending members to our parlement. Several records, and bookes of our law^c, doe testify, that the kingdome of Wales (for so it is stiled) was holden, of the crown of England, by a feudall right : as severall other kingdomes of Europe were ; Lombardy, Sicily, Naples, and Bohemia, of the empire ; Granada, Leons, of Arragon ; Navarre, Portugall, of Castile, &c. And in that statute 12 E. 1. the word feudall right is used for Wales. Butt they were not easily reduced, struggling still for their liberty ; yett somewhat pacified, for the time, by that conceit of this king E. 1. who sending for his queen Elianor, being with child, out of England^d, to be delivered at

^a Stat. 3 and 4 P. and M. c. iv. ^b Co. 4 Instit. f. 353. ^c 7 Rep. f. 21. b. Calvin's case. T. 5. E. 3, 4. Braeton, lib. v. f. 395. Stat. Wall. 12 E. 1. Jure feodali. ^d History of Wales, p. 376.

Carnarvan castle; after she was brought to bed of a son, the king ingaged himselfe to the Welch, that they should have a prince most free from all kind of blemish uppon his honor, and one that could not speake one word of english; meaning this young prince; and by this means seemed to satisfy the resolutions of the Welch, never to admit any one for their prince, butt who was their countryman, and borne amongst them; as this prince Edward of Carnarvan was. In whose reigne we find writs^a for the summoning of 24 out of South Wales, and 24 out of North Wales, to consent to those things which should be ordeined for the common peace of the kingdome, and of those parts: which differed much from the former course, where the parlement declared the prince of Wales to be a rebell, for not having done his homage^x.

Many severe lawes, in the parlement of England, were made against the Welch, in the reigns of H. 4. and H. 5. and the more rigid perhaps, bicause they had taken part with their lawfull soveraigne, R. 2: which lawes were afterwards repealed, and the nation became quiet when H. 7. their own countryman, obtained the crown. And his son H. 8. y att the suit of his subjects of Wales, incorporated that dominion with England: that they should enjoy the same liberties and lawes as naturall borne subjects of England; and send knights, and burgeses to the parlement. Thus had the subjects of Wales their votes, and assent, in the passing of lawes in the parlements of England; as Berwick also had by their burgeses. Butt Ireland, and all forrein plantations within the dominion of the king of England, may be bound by perticular, or generall words, in an act of the parlement of the kingdome of England.

^a 15 E. 2. Rot. claus. m. 13. dorf. and 20 E. 2. m. 3.
claus. m. 1. dorf. ^y St. 27 H. 8. c. xxvi.—34 H. 8. c. xxvi.—37 H. 8.
c. xxvi.—18 El. c. vii.

^x 4 E. 1. Rot.

And of the church of England.

TH E king, as head of the church of England on earth, and having the soveraigne power in matters usually termed ecclesiasticall, as well as in temporall, he summons his parlement, to consulte, among other affayres, perticularly of those which concerne the state and defence of the church of England.

What may be meant by the word church, and whether there ever was any nationall church except that of the Jewes, and of the universall catholick church of Christ on earth, fundry learned tracts are extant: and the argument therof deserves a better and more knowing judgement, and profession, than I can pretend unto, to discourse theruppon; and may fill a larger treatise than I intend. I shall take the word according to the usuall acceptation of it, signifying ecclesiasticall affayres, matters pertaining to the ecclesiasticall body and politie of this nation, wherof the king is also the head, and hath jurisdiction therein, as well as in temporall matters; wherof I intend shortly and historically to discourse, out of our histories and records, which doe plentifully evince the same.

We may begin ^a as high as our first christian king Lucius, whom Eleutherius bishop of Rome, stiles God's vicar within his kingdome. The like title of Christ's vicar ^b, was assumed by king Edgar, in his charter to the monastery of Winchester: and in his oration to his clergy, he saith of them ^c "the examination of all their manners belongs to us."

^a Sir Jo. Davys Rep. f. 88. a.

^b Not. in Eadmer. Seld. f. 155. 161.

^c Not. in Eadmer. f. 161. — De quorum omnium moribus ad nos spectat examen.

King Ina faith^d, in the preface to his lawes, that he studied the health of the souls of his people, and the common conservation of his kingdome. Then he makes a law^e for the forme of life of God's ministers; then, for baptising of infants; next, against working on the sabbaoth day; then, touching sanctuary in churches: and many of them are agreeable to the jewish lawes.

King Alured^f beginnes his lawes with the decalogue; and after that, recites many of the lawes given by Moses; then, the letters of the apostles and elders^g to the churches of Antioche, Syria, and Cilicia.

The 2 ch. is^h of the immunity of the church; the 5 ch. [of the peace of the † church] and the 21, ⁱ against a priest that killes a man, for his confiscation; then, ^k for festivall dayes.

In the league between king Edward and Guthrune, it begins "That before all things, they religiously worship God alone, laying aside^l all barbarous worship;" to use which, that law makes it capitall. The 4 ch. is against incest. The 5. against working on the Lord's day. 6. For observation of fast dayes.

Athelsten^m begins his lawes [by ordering his bishops, &c. to pay tythes and] C. 25. prohibites buryall to a perjured person.

King Edmond begins his lawes, to punish priests for breach of chastity. C. 2. pronounces anathemaⁿ against those who pay not

^d Leg. Inae reg. — *paer smeagende be theape haelo una ræpla, & be thana ræthole unes rices.*

^e C. i. Be Goder the pena negole. — C. ii, iii. Be Cildum. — Be runnan daeger peopum.

— C. iv. ^f Leg. Alured. ^g Acts, xv. 23. ^h Be cýpucena pocnum.

† [Be cýpucena pnyth] ⁱ Be ppeortæ gereohre ^k Be Wæsse daege ppeolre

^l Faedus Edward. et Guthruni. — Haethendon. ^m Leg. Athelstani, RS.

ⁿ *Sý he amanrumod.*

tithes and other ecclesiasticall dueties. C. 5. That the bishops shall repayre the churches. Then he declares that he consulted with his councell, how the christian faith might be promoted. Then he makes a law touching marryages.

King Edgar^o beginns his lawes, concerning tithes and ecclesiasticall dues. C. 5. is for observation of the sabbath day, holy dayes, and fast dayes. Then follow the canons of king Edgar; which are all touching ecclesiasticall matters, the demeanor and duety of priests, of parents instructing the children in the christian faith, to teach them the pater noster and creed, to abstaine from filthy and blasphemous words and songs, to observe the sabbath, holy dayes and fast dayes; that the priests doe preach every Lord's day; that christians eat no bloud, nor sweare. Then is enacted the manner of confession, with the prayers, and imposing of penance. Then they enact that if a child dye unbaptized, by the default of the priest, this law degrades that priest. Then it enacts satisfaction for finnes; then how penance may be redeemed; and lastly, of the penance of great men.

King Cnute begins his lawes, commaunding all^p to worship one God and to keepe one rule of christian religion: and then, of matters touching the church, and priests, whom he exhorts to live godly; then, of unlawfull marryages. C. 8. For payment of tithes and other church dueties; C. 15. Of the Lord's day; C. 18. An exhortation to confession and penance; C. 19. For receiving the sacrament; C. 20. Commaunds faithfullnes to God; C. 21. Love and worship of him; C. 22. To learne the Lord's prayer and the creed; C. 23. To avoyd sin; C. 24. Fornication and adultery; C. 25. To

• Leg. Eadgari, RS.

• Leg. Canuti regis.—Lupian.

tremble at God's judgements ; C. 26. The dueties of bishops and priests: and all of them matters purely ecclesiasticall. Then he^r forbids barbarous worship, and superstition ; and professeth to doe all things for confirmation of christian piety. He degrades and banisheth priests who committ murder, or other great offences. He commaunds observation of the Lord's day, holy dayes, and fast dayes.

Ælfric, in his canons^s, saith unto the priests, " I tell you, I will " not beare your negligence in your ministry:" and all those lawes are concerning the duty of priests, and meerly matters ecclesiasticall.

Four hundred years after Christ^t, pope Innocentius confessed to the bishops of Africa, that he had not sufficient authority to send for Pelagius the Briton, who had spoken lewd words in derogation of God's grace ; and that he should be called by those that were neerer to him : and 200 years after that, " when pope Gregory sent Augustin the monke and his fellowes, to convert the Saxons, they stayed in the isle of Thanet till they might know the king's pleasure.

King Kenulphe^w, by his charter in parlement, exempts the abbot of Abindon from episcopall jurisdiction ; and graunteth ecclesiasticall jurisdiction to him. And it was usuall, both before and after the comming of the Normans hither, for the kings to give bishopricks^x by the ring and the staffe, as the investiture.

^r P. 2. c. v.—C. xi.—C. xxxviii.—C. xlii. &c. &c. ^s Canones Ælfrici ad Wulfsinum episcopum.—N. B. Candour obliges us to own, that this particular quotation makes nothing for the author's argument: for Ælfric (supposed to be an abbot) writing to Wulfsin (a bishop) introduces the passage, quoted by Mr. Whitelock, with these words—Nos vero scriptitamus hanc epistolam—quasi ex tuo ore dictata sit, et locutus esses ad clericos tibi subditos, hoc modo incipiens—(M)

^u Bilson, differ. p. 41.—Bede, lib. i. c. 25.

^t August. epist. xcv, xcvi.

^w 5 Rep. eccles. c. f. 10.

^x Per annulum et baculum.

Edward the confessor, in his lawes, calles himselfe viccar of the most high God; and constituted to that end, that he should governe the kingdome and people of the Lord, and above all, the holy church, and defend it from all wrong: which are the words of this writ.

King Wil. 1. although he came into England with the clergie's benediction^y, the pope having sent him an hallowed banner with one of St. Peter's haire in it; yett when his legat required him to doe fealty, to acknowledge the church's superiority, he answears^z, "Fealty I would not doe, nor will I doe it; bicause neither have I promised it, nor doe I find that my auncestors did it to your auncestors." And he fully manifested his own superiority in ecclesiasticall matters, by his charter of exemption^a to Bath abbey, by his division of the bishop's court from the hundred court, and by appropriating of churches with cure to ecclesiasticall persons. So that it seemes to be true, which Eadmerus testifies of his power^b, "that all things both divine and humane were att his becke." Also the primate of his kingdome he did not suffer to direct, or prohibite any thing, butt what was according to his will, and first ordeined by him.

When Anselme^c asked leave of William Rufus to goe to Rome, the king told him that no archbishop or bishop of his realme should be subject to the pope or court of Rome; and if he asked this leave any more, or appealed to Rome^d, he should speedily depart out of

^y Not. in Eadmer. f. 164.—Sir Jo. Davys rep. f. 89.

^z Fidelitatem fa-

cere nolui nec volo, quia nec ego promisi, nec antecessores meos antecessoribus tuis id fecisse comperio.

^a Eadmer. f. 165. 167.—7 E. 3.—Quare imp. 19.

^b F. 6.—Cuncta divina simul et humana ejus nutum expectabant.

^c Mat.

Paris in Gulielm. 2, an^o 1094.

^d Anselm. epist. xxxvi. ad Paschal.

his realme : and bicause he went thither without licence, all his goods and cattells were seised to the king's use, and he constreined to live in banishment during this king's life ; and could not returne in the time of H. 1.^e without promise to performe the customes of W. 1. and William Rufus. And when the king perceived that he combined with the pope, to hinder his donation of bishopricks, the king wrote to the pope, challenging that right ; and his proctor in Rome told the pope, that his master would rather loose his kingdom, than the donation of bishopricks. ^f In his charter to the abbey of Reading, he saith, “ Wee ordeine, as well in regard of ecclesiasticall as royall power :” and he forbad the elect of Yorke^e to come into the realme, bicause he received his consecration att Rome.

In king Steven's time^h, a monke writeth, “ that appeals were “ not in use untill Henry bishop of Wincester, by his mischiefe, “ while he was legate, did cruelly intrude them; and by that meanes “ some few of them came to have place heere.”

H. 2.¹ was a strong opposer of the church of Rome, as [appears] in the story of Thomas of Becket, and by the lawes made att Clarendon, abridging the pope's power, forbidding appeales and paying of Peter pence, and that none should bring decrees from thence, to be executed heere, on paine of imprisonment and confiscation, nor bulls of interdicting the realme, on paine of high treason. And

^e Mat. Paris in H. 1. an^o 1104.

^f Co. 5. r. Eccl. c. f. 106.

^g Mat. Paris, an^o 1119.

^h Sir Jo. Davys rep. f. 90. b.—Appellationes in usu non erant, donec H. episcopus Wint. malo suo, dum legatus esset, crudeliter intrusit.

ⁱ Gul. Nubridg. rer. Angl. lib. ii. c. 16.—Mat. Paris, an^o 1164.—R. Hoveden. f. 496.

though he relented a little, when the pope had armed his sons and neighbours against him; yett he made what opposition he was able, constantly, against it, and to assert the right of his crown in those matters. In the epistle to Coke's 6 rep. his lawes are more att large cited; and by Mathew Paris.

R. 1.^k gave the bishopricks; and made the bishop of Durham, for his money, an earle; drolling, "that of an old bishop, he had made a young earle." He graunted great priviledges and exemptions to the clergy of Normandy.

In the time of king John, the power of Rome grew high in this realme^l, by absolving the people of their oath, and blessing such as would undertake a wicked act, to depose a rightful king: which courtes brought him to surrender his crown to the legat, and to take it againe as the pope's farmer. Butt the barons told the legate, that the kingdome of England never was, nor should be St. Peter's patrimony; and cryed out uppon those shriveld ribalds the clergy:^m and none of his successors ever observed the forme of his submission. And this king did not only esteem it his own right, to give the pastoral staffe; butt graunted to William Marshall and his heirsⁿ the donation of the pastorall staffe of the abbey of Nutley; the which was a meere spirituall right.

In H. 3. time^o, prohibitions were frequent: and to write to the bishop, to certify the loyalty of marriage, bastardy, &c. And when

^k Mat. Paris, p. 154. 50.—Juvenem feci comitem de episcopo veterano.

^l Mat. Paris, 1213. 1216.

^m Polidore Virgil, lib. xv. in Joh.

ⁿ Not. in Eadmer. p. 143.—Donationem baculi pastoralis abbathiae de Nutlega.

^o 3 H. 3. Prohib. 13.—4 H. 3. and 15 H. 3. Prohib. 15. 22.—Rep. 5 eccles. c. f. 11.

the bishops required the Lords consents^p, that such as were borne afore matrimony should be legitimate as well as those borne within matrimony, bicause the church accepts them as legitimate to inheritance; the barons answered, "We will not change the lawes of England."

In this king's time^q, are some records (yett extant) forbidding men to be drawne in plea out of the kingdome.

His son E. I. did much recover the right of the crowne in ecclesiasticall matters. He would not suffer those of the clergy^r to goe to Rome without his licence. In the statute de bigamis^s, they expound the councell of Lyons; resolve no ayde of the pope. In his time, the statute of mortmain^t was made; which much impayred the greatnes of the clergy. He forbids provisions^u of the pope, without his knowledge: and shortly after, was the statute of Carlisle made; which recites the usurpations of the pope in giving ecclesiasticall benefices to aliens, and enacts that the said oppressions, grievances, and damages, shall not be suffered. He denyed William of Nottingham^w to prosecute his appeal to Rome, bicause it would infringe his priviledge; butt bad him to enter it heere, if he would. He setts a penalty uppon the provisions^x of appropriations. And he was cited by the pope, to appeare before him^y. The great councell were highly offended att it; and wrote back to the pope, that it was notorious, that the king of England was not to appeare before him or any other; and said, that although the king would,

^p 20 H. 3.—Stat. mortm.—Nolumus leges Angliae mutare. ^q 45 H. 3.
^r 1 E. 1. Rot. claus. m. 5. dorf. ^s 4 E. 1. c. v.—P. 5 E. 1. In recept. scac. coram re.
^t 7 E. 1. Stat. mortm. ^u 18 E. 1. Petitiones coram re. f. 3.
^w 18 E. 1. Plees in parl. ^y 28 E. 1. In scaccar.

yett he could not doe it. He denyes the pope's bulles^z, and Peter pence, and other exactions of Rome. He would not licence his bishops to repayre to the generall councell, till they tooke an oath^a, not to receive the pope's blessing; regarded not his prohibition of his war against Scotland; prohibited the payment of first fruits to the pope; seised the temporalities of the clergy, for refusing to pay a tenth, though the pope forbad them. In his time^b, it was adjudged treason, for one subject to bring in a bill of excommunication against another; and a high contempt against the crown, to bring in bulls of provision, or briefes of citation; and the archbishop of Yorke had all his lands seised into the king's hands, and lost during his life, for a contempt, in refusing to admit the king's clerk to a benefice, against the pope's provision; and this held to be by the common law of England.

In E. 2. time, was somewhat more favour shewed to the clergy; as by the statute^c entitled, 'Articles for the clergy' may appear: yett in them the right of the crown and parlement, as to those matters, is likewise manifested. And this king, by his letters^d, civilly intreated the pope and cardinalls, not to hold plee of things done in England, att Rome.

Where att the councell of Vienna held 4 E. 2.^e the pope, out of the fullnes of his power, dissolved the order of templars, and gave their lands to the hospitalers, a resolution was had, "That in point

^z 33 E. 1. Lib. apud turrin, f. 114. — 35 E. 1. Ib. f. 140. et rot. pat. m. 25.

^a Sir J. Davys rep. f. 95.

^b 30 E. 3. Lib. affis. p. 19. — Bri. praem. 10. —

5 Rep. eccles. c. f. 12. — 19 E. 1. — Quare non admis. — 39 E. 3.

^c Stat. 9 E. 2. per tout.

^d 14 E. 2. Lib. apud turrin, f. 85. — An^o

1311. — *Quanquam de jure non possumus, tamen ex plenitudine potestatis nostrae,* &c.

“ of law and conscience, the lords of the fees might enter into
 “ those lands, notwithstanding the act of the councell, and giift
 “ of them to the hospitalers :” to prevent which, the statute of
 templars^f was made in our parlement. And though in his time the
 ecclesiasticall courts held their pleas^g by the statute de Circumspectè
 agatis, and by generall allowance and usage, yett they thought them-
 selves not safe, till the parlement had graunted them jurisdiction in
 those causes; as by the stat. of the articles of the clergy^h before
 cited. And it was objected against this king, as one of his great
 defaults, that he had given allowance to the pope's bulles and
 authority.

Being now come to a more large view, by our records and printed
 statutes, scarce a parlement will be found wherin somewhat doth not
 appear of their authority in ecclesiasticall affayres; to recite the per-
 ticulars wherof, would prove tedious: I shall mention some of the
 principall. In the minority of E. 3. and the heate of his warres in
 France, the pope sent many briefs, and bulles into England, att
 which both the king and people were much grieved, and did wholly
 oppose them; and by the resolutions of the judgesⁱ, and of the
 parlements in his time, they admitted no jurisdiction of the court
 of Rome heere, butt punished those who did bring any bulls from
 thence, or obtained any provisions of benefices and the like. And
 this king assumed his own right in the supremacy ecclesiasticall:
 which appears by many statutes and judgements in his reigne; per-
 ticularly by the statute of provisors^k, which recites the statute of
 Carlisle, that the church of England was founded in the estate of
 praelacy, by the kings and their predecessors, and the nobles and

^f 17 E. 2. Stat. templarior. ^g Sir Jo. Davys rep. fo. 95 b. — Co. 5. r.

eccles. c. f. 13 b. ^h St. articuli cleri, 9 E. 2. ⁱ Co. 5. rep. eccles. cas.

f. 15, 16, 17.

^k 25 E. 3. st. provisors.

their auncēstors. And this statute, and that two years after¹, forbidding provisions of benefices by the pope, fully testify the authority of the king and parlement in these matters of the church: and so doth another stat.^m forbidding those to be cursed who shall execute the former lawes. In our law annales, we also find resolutions to the same effect^a; as, that the king may exempt any ecclesiasticall person from the jurisdiction of the ordinary, and may graunt him episcopall jurisdiction (as he did to the religious houses founded by him) and that a priour^o being the king's debtor, may sue an ecclesiasticall person for tithes in the exchequer: for untill a statute of this king^p, right of tithes was determinable at the temporall courts, and in many mannors of the king and other lords, they had probate of willes. He translated cannons secular^q, into regular and religious; and made the priour and covent of Westminster, who were regular, and mort in lawe, capable to sue and be sued.

In the nonage of R. 2. the power of Rome againe incroached by sending hither bulls briefs and legates; wherof the people were so impatient, that they offered to live and dye with the king, in withstanding this forein usurpation. In his time^r, it was made death to bring any summons, excommunication, &c. against those who execute the statute of provisors: and another statute makes it a praemunire^s to purchase or pursue, in the court of Rome, or elsewhere, any translations, processses, and sentences of excommunication, bulls, instruments, or any other things which touched the king; against him, his crown, and regalty, or against his realme. And yett,

¹ 27 E. 3. Stat. provisors, c. i. ^a 38 E. 3. c. i, ii, iii. ⁿ 17 E. 3.
c. xxiii. ^o 38 Affis. p. 20. ^p 38 E. 3. c. vii.—Co. 5 rep. ecclef.
c. f. 16. ^q 38 Affis. p. 22.—49 E. 3. Lib. assis. p. 8. ^r 13 R. 2.
c. iii. ^s 16 R. 2. c. v.

against this king it was one of the objections, that he had allowed of bulls from Rome.

In H. 4. time (as in the time of the precedent king) were sundry resolutions of the judges¹, expressely disallowing the pope's authority heere: and a statute makes it a praemunire, to purchase bulls from Rome; and another act forbids the horrible mischiefs and damnable customes in the court of Rome, about compounding with the pope's chamber for first fruits; and another statute makes it also a praemunire, for any person to put in execution heere bulls obtained for the discharge of dismes.

In the time of H. 5.² an act gives power for ordinaries to inquire of the grievances of hospitals; another, to inquire of heresy; and another makes it a praemunire, for one by colour of provisions from Rome, and licences therupon, to molest any incumbent. In this king's reigne, the lands of religious houses were in some daunger to be taken away, by the authority of the parlement, from them³; the king being importunately petitioned to suppress them, bicause they being ill used, were made the nurseries of idlenes, gluttony, lechery, and pride; that their revenues would bring yearly to the king 20,000*l.* and also maintain 15 earles, 1500 knights, and above 6000 men at armes: butt by the policy, and liberall offer of the clergy, to further his title to Fraunce, this buisnes was then diverted.

In the minority of H. 6.⁴ when the commons had denyed the king a subsidy, the prelates offered him a large supply of his wants, if he would repeale the statute of provisors: butt Humphrey duke

¹ Co. 5 rep. ecclef. c. f. 22, 23, 24. — 2 H. 4. c. iii. — 6 H. 4. c. i. — 7 H. 4. c. vi.

² 2 H. 5. c. i. — 2 H. 5. c. vii. — 3 H. 5. c. iv.

³ Martin

Chron. p. 142.

⁴ Sir Jo. Davys rep. f. 96.

of Gloucester, who not long before had cast the pope's bull into the fire^y, caused this motion to be denied. In this king H. 6. reigne, it was adjudged^z, that the pope's excommunication is of no force to disable any man within England, by the common law; and that the king only may graunt or licence to found a spirituall incorporation.

In E. 4. time, the judges resolved^a that the pope could not graunt any sanctuary in England, and that if one spirituall person sue another in the court of Rome, where he might have had remedy before his ordinary, he shall incur a praemunire; that the pope's excommunication is of no force in England: and when two legates came into England one after another^b, they would not be admitted, till they had first taken an oath to attempt nothing against the king or his crowne.

In Richard the thirde's time^c, it was resolved that a judgement or excommunication in the court of Rome, did not prejudice any man in England.

The like resolutions were in H. 7. time^d: and by a statute†, power is given to ordinaries to punish priests; an high act of the exercise of ecclesiasticall power! He is said to be a mixt person^e, having both ecclesiasticall and temporall jurisdiction: and the next year it was resolved, that the king might dispence with the ecclesiasticall law for pluralities, and for a bastard to be made a priest.

^y L. an. 1. H. 7. f. 10.

^z 8 H. 6. f. 1.—9 H. 6. f. 16.

^a Lib.

an. 1. H. 7. f. 20.—9 E. 4. f. 3.

Fitzh. N. B. f. 44.

12 E. 4. f. 46.

^b 1 H. 7. f. 10.

^c 2 R. 3. f. 22.

^d 1 H. 7. f. 10.

† 1 H. 7. c. iv.

^e 10 H. 7. f. 18.—Persona mixta.

11 H. 7. f. 12.

His son H. 8. went through with the work of abolishing the power of Rome in England: the occasion thereof hath bin touched in another place. It chiefly begun 24 H. 8.^f when a statute was made, reciting that the knowledge of ecclesiasticall causes, by the goodnes of princes of this realme, and by the lawes and customes of the same, appertains to the spirituall jurisdiction; it enacts that they shall be definitively determined within the king's jurisdiction, and not elsewhere; and, to procure from Rome, or other forein court, any appeals, proces, sentences, &c. is made a praemunire.

The next year it is enacted^g, that the king may assigne 32 persons to examine the canons, and to continue such of them as they thinke fitt, and to restraine the rest; no first fruits to be paid to Rome; bishops to be consecrated in England; no impositions to Rome; no dispensations from thence, but by the archbishop heere; the king and his councill may reforme indulgences; none to goe out of England to generall councill.

The next year, enacted^h that the king shall be supreame head on earth of the church of England, and correct all haeresies, and offences; and the first fruits of all spirituall dignities shall be payd to him, and not to Rome.

In the 16 year of this kingⁱ, cardinall Woolsey, by licence from the pope, suppressed severall religious houses; and imployed their goods and lands towards the building and indowing of his colledge at Ipswich, and of Christ Church in Oxford. The king followed

^f 24 H. 8. c. xii.

^g 25 H. 8. c. xix, xx.

25 H. 8. c. xxi.

^h 26 H. 8. c. i. and iii.

ⁱ Grafton, hist. of the union of Lancaster and Yorke,

f. 137. 191.

this example of the cardinall (butt without the pope's licence) so farre^k, that by parlement all monasteries were given to him, which had not lands above 200l. by the year.

The next year, a lawe was made^l, that persons in holy orders shall be under the same pains with others, for their offences; to extoll or defend the authority of Rome, is made a praemunire; and the oath of supremacy is enacted; that all bulls and dispensations from the pope shall be void, and the effect of any allowable to be confirmed under the great seale heere.

Shortly after, by act of parlement^m, all the rest of the monasteries of England were dissolved, and their lands given to the crown; an act manifesting as much neglect of the romish power, and as much supremacy in the king in matters of the church, as may be imagined: which was further shewed by this king, in the lawes by him made for confirmation of the romish doctrine, and the 36 articles; uppon which, great cruelty was exercised uppon those blessed martyrs, who parted with their lives, to testify the true faith of Chriff.

By this dissolution of monasteries, a great part of the spirituall body of the Lord's house was excluded; there having bin of that house, att one timeⁿ, 65 abbots, 35 priours, and the master of the Temple, besides the bishops: butt in succeeding parlements, the number of the spirituall lords was uncertain; sometimes more, and sometimes fewer, as they were summoned or omitted. And Kellaway^o reports it to be said by the justices, that the king may well

^k 27 H. 8. c. iii.

^l 28 H. 8. c. i. x. xvi.

^m 31 H. 8. c. xiii.

ⁿ 49 H. 3. Rot. parl. m. 15, dorso.

^o F. 184, b.

enough

enough hold his parlement, by himfelfe and his temporall lords and commons, wholly without the spirituall lords.

The king's fon E. 6. proceeded in the buisnes of reformation, as to the doctrinall part; and his first act of parlement^p imposed a penalty against those that spake unreverently against the sacrament, or against the receiving of it under both kinds. The next is concerning bishops and ecclesiasticall matters; then, about the lands of religious houses come to the crown; for uniting of churches in Yorke; all former acts concerning the 6 articles, or doctrine or matters of religion, repealed; and it is made high treason to affirme that the king is not supream head of the church; all chanteries are given to the king.

The next parlement^a ordeins the book of common prayer (recited to be made by the aide of the holy ghost, and by the travell of the bishops and other learned men;) the manner of payment of tithes; prohibits eating of flesh uppon fridayer, satturdayes, ember dayes and in lent; for payment of tenths to the king; all lawes prohibiting the marryage of spirituall persons, (who by God's law may marry) are made void.

By the next parlement^r, bookes of popery are abolished, and images taken away, (repealed afterwards by queen Mary;) power given to the king and councell to name 32 persons to examine the ecclesiasticall lawes, and to sett forth such as they shall think fitt, not contrary to the common lawes and statutes; the manner of

^p 1 E. 6. c. i. — C. ii. — C. iv. — C. ix. — C. xii. — C. xiv. ^a 2
 & 3 E. 6. c. i. — C. xiii. — C. xix. — C. xx. — C. xxi. ^r 3 & 4 E. 6.
 c. x. — C. xi.

making and consecrating bishops and ministers. In the next parliament, people are required to come to church; and the booke of common prayer with some alterations is againe enacted; holy dayes, and fasting dayes, and abstinence from flesh in lent, not abrogated; the marryage of priests made lawfull.

These good lawes were all againe repealed by queen Mary his sister; by whom these lawes were made.—That she was borne in lawfull matrimony, and all divorces to the contrary repealed; all the statutes made in E. 6. time touching the sacrament, bishops, ministers, uniformity of service, marryage of priests, bookes, images, the common prayer, holy dayes and fasting dayes, are repealed; and such service and administration of the sacraments as was in the last year of H. 8. and no other, to be used; a penalty for disturbing preachers; she may, under the great seale, make orders for the governance of cathedrall and collegiate churches; a statute of king E. 6. a^o 7. (not printed) wherby the bishoprick of Durham was dissolved, and the lands therof given to the king, is repealed; an act of 5 R. 2. for arresting of hereticall preachers, of 2 H. 4. c. xvi. for repressing of heresies, and of 2 H. 5. c. vii. for suppressing heresy and lollardy, are revived; (butt this act was repealed by 1 El. c. i.) all acts made against the see of Rome are repealed; (and although in this act this was held fitt to be done, yett the clergy thought fitt to petition the king and queen that the lands and goods of the clergy, late dispersed among the temporalty, might so remaine; the clergy preferring the publick peace, before their private commoditie, with which, cardinall Poole thought good in wisdom, to dispence; and that was so confirmed by the parliament, and the statutes for assu-

5 & 6 E. 6. c. i. — c. iii. — c. xii. — 1 Mar. c. i. — c. ii. —
c. ix. — c. iii. — c. viii. — 2 & 3 P. & M. c. iv.

rance of them :) first fruits to the queen to cease, and she renounceth ecclesiasticall livings.

Queen Elizabeth restores all againe, in order to the reformation^u. She repeals the stat. 1 & 2 P. & M. c. viii. and revives the statutes of her father for taking away the power of the see of Rome. And revives the statutes of her brother 1 E. 6. c. i. and repeales the statutes 1 & 2 P. & M. c. vi. abolishes forein authority, annexeth ecclesiasticall jurisdiction to the crown, and hath power to assigne commissioners to exercise ecclesiasticall jurisdictions, and enacts the oath of supremacy; praemunire to continue in force; no matter of religion made by this parlement shall be judged heresy or scisme; the act of 1 M. c. ii. repealed, and the booke of common prayer of 5 & 6 E. 6. c. i. established to be used; all persons to resort to church; first fruits and tenths are restored; penalties are imposed for mainteining the authority of the see of Rome; persons to take the oath of supremacy; fasting dayes to be kept; that the bible and common prayer be translated into welch; for consecrating of bishops; confirmeth the booke of common prayer, according to 1 El. c. ii. A prohibiting^w of bulls from Rome, and against absolving or reconciling any person to that see, and against bringing in of agnus Dei, pictures, crosses, &c. ministers to subscribe the articles agreed on for confession of faith, &c. and reformation of disorders in ministers; it is made treason to withdraw any from the religion established, to the romish religion, or to be reconciled or withdrawn; against saying or hearing of masse; penalty for not comming to the church; divine service permitted in one's house, according as it is established, and

^u 1 El. c. i. — c. iv. — 5 El. c. i. — c. v. — c. xxviii. — 8 El. c. i.

^w 13 El. c. ii. — c. xii. — 23 El. c. i. — 27 El. c. i. — c. xi. — 35 Eliz. c. i. — c. ii. — 39 El. c. viii. — c. xviii.

so the parties be att their parish church 4 times a year; all jesuits and romish priests to depart the realme, and not to returne on paine of high treason, and to receive them, is felony, and if one knowing it doth not discover the same, he forfeits 200l. wednesday no fasting day; victuallers not to utter flesh in lent, nor on fridayer and saturdayes; (this is expired;) for avoiding perills by wicked and dangerous practises of seditious sectaries and disloyall persons, none are to perswade others to forbear comming to church, or to be present att any unlawfull assemblies, conventicles, or meetings, under colour or pretence of any exercise of religion, contrary to the queen's lawes, or if any person shall for a moneth, forbear to heare divine service, and repaire to any such conventicles, they shall be imprisoned till conformity, which if they doe not within three moneths, after conviction they shall abjure the realme; (this stat. is said to be continued. 1 Jac. c. 10. butt I can find no such act of that title continued, and if not, then it is expired, nor doe I find it continued in any act of parlement afterwards;) convicted popish recusants are confined to their dwelling-houses and 5 miles about; deprivations and making of bishops and deans by the queen is lawfull; a recitall of sundry statutes, and among the rest, of one 35 El. entituled, "An act to retaine the queen's majestye's subjects in their due obedience," (of which title there is no act in that yeare) are continued to the next parlement.

King James proceeded in the course of queen Elizabeth: and very many and good lawes were made in his time, touching matters ecclesiasticall. That * all the acts made in queen El. time, against jesuits, priests and recusants be putt in execution, with favour uppon conformity; † with some additions touching recusants, and seminaries

* 1 Jac. c. iv.

† 1 Jac. c. xxv.—c. xxix.

bejond seas. The act of 35 El. heer also said to be intitled " An
 " act to retaine the queen's majestye's subjects in their due obe-
 " dience," is continued to the next parlement. No licence to eate
 flesh shall extend to beefe, veale, porke, mutton or bacon, in lent or
 uppon fasting dayes. Prayer^z to be yearly made for delivery of the
 king, &c. from the gunpowder treason. A stat. for repressing and
 discovering of popish recusants. Of convicting them, and penalties
 on them who shall not take the oath of obedience. Treason, to
 practise to absolve or withdraw any from their obedience, and to re-
 concile them to the church of Rome. 12^d. a default for not com-
 ming to church. Two clauses in the act 35 El. still intitled " An
 " act to retaine the queen's majestye's subjects in their due obedience,"
 (which are the words of the stat. touching conventicles,) are re-
 pealed, and no more; and in lieu therof, the penalty of 10l. a
 moneth is imposed on those who keep in their house any servant or
 stranger who comes not to church. For discovering of priests and
 masse, confining recusants, disabling them from offices; of their
 wives, marryages, and baptizing children, and sending them beyond
 sea, disabling of them; against popish bookes; crucifixes to be de-
 faced. All to be naturalized, or restored in bloud shall receive the
 sacrament, and take the oaths. Against^a the sin of drunkennes.
 To reforme prophane swearing and cursing.

In the time of our late soveraigne king Charles^b, an act was made
 to reforme abuses on the Lord's day; another, to restraine sending
 abroad any to be popishly brought up; a repeal of part of the statute
 of 1 El. touching commissioners for causes ecclesiasticall, and no
 court to be erected from thenceforth, to have like powers as the

^a 3 Ja. c. i. — c. iv.
 c. i. — 17 Car. 1. c. xi. — c. xxviii.

^a 21 Ja. c. vii. — c. xx.

^b 3 Car. 1.

high commiffion court had; that perfons in holy orders fhall not be intangled with fecular jurifdiction, fhall not fitt in parlement, nor be of the privy counsell, juftice of peace, or exercife temporall authority by commiffion.

I may be cenfured to have infifted more than was neceffary on this point: butt perhappes it may be found, in our time, not unufefull. It is a plaine, true, and fhort historicall collection, as to matter of fact, of our kings and parlements treating and determinations in matters concerning the ftate and defence of the church of England. And uppon the fame fubject, I might much enlarge myfelfe in notes of the like, done by princes and councells of other countrys; and that, from very antient times. I fhall content myfelfe with the recitall of butt a few of them.

It is affirmed^c, by the great mafter of this and other learning, to be out of controverfy and very manifef, that the fame perfons had cognifance, or when needful might take cognifance, as well of facred as prophane matters together, without that diftinction of ecclefiafticall and civill; and before the law given in Sinai; and moft perfpicuoufly appearing in the tribunalls fett up by Jethroe's advice, and in the judgements of Mofes, to whom the appeales were made whether the matter were facred or prophane; and that it was fo with Adam, Seth, Noah, Melchifedek, Abraham, and other princes of thofe times, Melchifedek^d is ftiled king and prieft, and Mofes^e prieft of priefts and chiefe king, and alfo prieft. That the prieft-hood was in the firft borne, as in Melchifedek, who is taken for Sem the firft borne of Noah, and in the reft of the firft borne of thofe times before Aaron, is admitted both by chriftians and he-

^c Lib. i. de fyn. Seld. c. xvi.

^d Gen. xiv. 18.

^e Ἱερεὺς ἱερέων.—

Rex fummus, item facerdos.

brewes : and from the example of the hebrewes (although miserably depraved) the antient pagans drew their custome to have publique priesthoods, which were patrimoniall and hereditary. Abraham, and every patriarche or prince, within his territory did also exercise the office of priest : and the like was also among the old pagans, where the prince was likewise chiefe priest. The hebrew word for a priest^f signifies also the prince of a territory : not that priesthood made one a prince, or carryed commaund with it ; butt that many princes were chiefe priests also ; and so the roman emperours^g were high priests likewise.

Aristotle^h, speaking of the kings in the time of the heroes, saith, “ they were rulers of matters of war, and of sacrifices or sacred things, except those things which concerned the sacerdotall function : ” and a little after he saithⁱ, “ the king was leader or generall of the war, and judge and moderator of divine things, as to jurisdiction in them. ” Most nations followed the precedent of the Hebrewes, as to jurisdiction in sacred matters exercised by their kings, and supream rulers.

Sir Walter Raleigh notes^k, that the leviticall priests in the old law never arrogated to themselves any temporall, or coactive power, nor advanced their miters against the crown of Israel : and sure it is, that the sons of Aaron were alwayes obedient to the sons of David, and acknowledged them their lords. The first (saith he) wee reade of, that used the advantage of religion towards the getting of temporall power, was (if not Mahomet himselfe) Abubachar his successor ; who dispoyled poor Ayliffe, the nephew of Mahomet and

^f כהן^g Pontifex summus imperator.^h Polit. 3. c. xiv.ⁱ Στρατηγὸς ἦν καὶ δικαστής ὁ βασιλεὺς καὶ τῶν πρὸς τῆς Θεῆς κύριος. — Κύριοι δὲ ἦσαν τῆς τε κατὰ πόλεμον ἡγεμονίας, καὶ τῶν θυσιῶν, ὅσαι μὴ ἱερατικαί. (M)^k MS. treatise of war, f. 29.

heir of his great riches, by this pretence, “ that to whom belonged
 “ the succession in wisdom, to him also belonged the succession in
 “ wealth.” And though at this day, the musty among the Turkes
 holds all he hath, at the discretion of the great sultan; yett by Abu-
 bachar’s example, in all faracen lands many prophets, or deceivers
 which gott that name, never rested ’till they became kings. The
 seriffe of Barbary was one of the last, and greatest; and among
 others, won the kingdome of Fesse from his own soveraigne. “ And
 whether (saith our author) the clayme which the popes lay to their
 supremacy, had not affinity with the doctrine of Abubachar, lett
 others judge; that their practices to mainteine it have bin suitable
 to those of the seriffe, all historians doe testify.” Those of the church
 doe shew that the clergy, for 850 years together after Christ,
 claymed no superiority or jurisdiction; butt left the same, and sub-
 mitted themselves therein to their own princes, who tooke uppon
 them the soveraignty in these matters, and over the persons which
 were afterwards called ecclesiasticall: as the emperors, in those times¹,
 banished the bishops; Julius and Liberius by Constantius, Boniface 1.
 by Honorius, Silenus and Virgilius by Justinian, Martin 1. by Con-
 stantine 3. Leo 4. submitted himselfe in all things^m, great and
 smalle, to the commissioners of Lodowick the west emperour; and
 offereth to amend all that is amisse, by the prince’s judgement. And
 in the strife between Donatus and Cecilianusⁿ, the matter and per-
 sons being both ecclesiasticall, Meltiades then bishop of Rome, was
 appointed by Constantine, with others, to determine the matter:
 from whose judgement the parties appealing, the emperor appointed
 new judges, from whom they appealing likewise, at last Con-
 stantine decided it, sitting himselfe in person.

¹ Martin. Polon. in Jul. & Liber. — Platina in Bonifac. 1. ^m Causa 2.
 quæst. 7. c. nos si. ⁿ Eusebius, lib. x. c. 5. — Optatus, lib. i. contra Parm.
 — Austen. ep. 162. 166.

Theodosius the elder, Damasus, Siricius, and Anastacius, complained against Flavianus: butt the prince heard, and justified him. Of Arcadius his son^p, Innocentius bishop of Rome requested a councell, for triall of Chrysostom's cause: butt the petition was denyed, and the messengers sent away with reproach. By Honorius another of his sons^q, Bonifacius and Eulalius chosen bishops of Rome in a tumult, were both commaunded to depart the citty: and Bonifacius being restored, putt up a supplication to the prince for a decree for future elections, which was made by him.

Leo bishop of Rome^r made suit to Theodosius the younger, to commaund a councell in Italy, for suppressing Eutiches his error; butt he appointed it att Ephesus, and would not be perswaded to reverse their judgement; butt his successor Martian did it, uppon supplication of the pope, and commaunded the councell of Chalcedon^s, where himselfe sitting in person forbad the bishops to defend or avouch any thing of the flesh, and birth of our saviour, otherwise than the nicene creed did containe.

“We commaund (saith Justinian^t) the blessed archbishop of Rome, &c. to obey the law then made.” And Gregory I. “writing to Mauritius, useth this stile, “My lord, my most gracious lord, “I your servant, and subject to your commaund,” &c. and makes many submissions to the emperor, who overruled him in his episcopall jurisdiction.

^a Theodor. lib. v. c. 23.

^p Sozom, lib. viii. c. 28.—Niceph. lib. xiii.

c. 30.

^q Lib. pontif. in vitâ Bonifac.—Epist. Bonifac. ad Honor. August.

—Rescript. Honor. ad Bonifac. Con. 1.

^r Leo epist. 9. 12. 13. 17. 24.—

43. 50.

^s Concil. Chalced. art. 1.

^t Novel. constit. 123.

^u Greg. epist. lib. ii. c. 100.—Id. epist. lib. iv. c. 76 & 78.

Agatho ^w, bishop of Rome 680 years after Christ, when Constantine I. sent for some learned men out of the west parts, to come to the sixth generall councell, returnes this answer: "Your princely favour mildly commaunding, our basenes hath obediently fulfilled that which was by you commaunded:" and in another place, saith, "All the bishops of the north and west parts, servants of your christian empire," &c.

Leo 4. ^x submitted himselfe to Ludowick the father; and after confirmed his obedience to Lotharius the son; promising obedience to their decrees.

In the 20 constitutions ^y, wherein Justinian disposeth of crimes and causes ecclesiasticall, almost every sentence is a commaund; the like in 123, intituled of divers ecclesiasticall chapters ^z; and the like in the lawes of Constantine, Charles, Lodowick, Lotarius, and others. By all which, and many of the like nature which are omitted, it appears, that all the submission and obedience, which subjects owe their prince, was acknowledged by the clergy to the emperours, and their new advanced supremacy not thought on; which was afterwards rayfed to its height under pretence of holynes, rayfing contentions among princes, taking part with the stronger, making use of their armes for their own advantage; by excommunicating Leo 3. ^a for casting down of images, Frederick and H. 4. by Hildebrand, for refusing to yield up to the pope the investiture of bishops, and collation of ecclesiastical dignities: and though ^b he submitted,

^w Sext. synod. act. 4.—Agathon. epist. 2.

^x Distinct. 10 c. de capitulis.

^y Novel. constit. 3. 5, 6. 16, &c.

^z Socrates, lib. i.—Code, lib. i.—No-

vel. constit. Leg. Franc. lib. i.

^a Sir Walter Raleigh's MS. treatise of war,

f. 35, 36.

^b Lambard.—Scharp.—Abbas Urspergens.—Bilson. differenc.

waiting himfelfe, his queen and young prince, in extream froft and fnow, barefooted, and in woollen, att his gates 3 dayes together yett fuch was the humility and mercy of this fervant of the fervants of Chrift, that he nothing regarded the pennance and fubmiffion of the emperour, his wife and childe, butt perfecuted him, by rayfing one rebellion after another againft him, encouraging (like a common father) the emperor's own fons againft him; and ceafed not till this poore prince was difpoyled of his crowne, forced to beg food of the bifhop of Spire, and being denyed it, pined away, and dyed.

Many other princes, who oppofed or did not affift their aspirings^c, were in like manner curfed, and excommunicated by them; and their fubjects abfolved from their oathes; as to king John of England, Chilperick of France, and divers others; and fometimes doing the like for princes againft their fubjects, which made moft for the holy advantage; rayfing great fums, under pretence of the holy wars and for pardon of fins, and then imploing the money to the pious ufe of rayfing their own ambition; bleffing of Charles Martell, Pepin, and other princes that affifted their ufurpations; and giving them countreyes unlawfully gained from the right lords. By thefe, and the like means, did the ecclefiafticall ftate in thofe times grow up. ^d Yett (as in England and other countreyes, fo in France) the progreffe therof hath always mett with contradiction, and juft oppofition.

† The councell of Ephesus threatened the legates of Rome. The divines of Paris^e condemned pope John's doctrine, with the found of trumpetts; allowing him as little fupremacy as Charles the french king did; who with the advice of the bifhops, princes, and univer-

^c Sir Walter Raleigh, *ibid.*

^d Eilfon differ. p. 78.

† In apologet.

Ciril. mandat. fyn. Eph.

^e Gerf. 4 parte. per. Jo. Manius. de fchifm. &

concil. c. xxii. — Lazian epit. c. cclxvii.

fities of his realme, decreed that the whole church of France should depart from the obedience of Benedict. And Charles 7. att a parlement att Burdeaux ^f, made a law called the pragmaticall sanction, for the perpetuall observation of those things which the councill of Basile had decreed; which curbed and cashier'd the pope's power; which the pope reversed, and laboured the king to doe it; butt all the clergy of Fraunce resisted him, and appealed to a generall councill. And a little before, in a councill att Tours ^g, the prelates of France gave their full resolution to Lodowick 12. that it was lawfull for him to forsake the pope's obedience, and to despise his curses. Butt Philip the fayre ^h, before that, clapt the pope's legate by the heeles; and sequestred himselve and his whole realme from his obedience; and att length caught the pope's own person, and kept him in prison till he dyed. Att length Francis 1. in his interview with Leo 10. did remit the force of it in the accords ⁱ of France; which made his secretary say, that the garland of France was betrayed.

The kings of Spayne, in Castile, have some limited spirituall power ^k, by a late priviledge of Adryan 6. graunted to Charles 5. butt, when they see their time, they take so much as shall serve their turne; as Philip 2. seised upon the temporalls of the archbishop of Toledo. When the bishop of Garanza was apprehended att Rome for new heresy; and when Sixtus 5. sent to him, that if he would undertake a war against England, he would remit to him all the re-

^f Naucler. general. 48.—Leland, 1488.

^g Lateranens. concil. sub Leo

10. Sessio 10.—Chron. Massæi in an^o 1511.

^h Lazian. hist. universit.

epitom. c. ccxlvii.—Philip de Comines, lib. ix.

ⁱ Concordata Galliae.—

Budæus de asse. lib. v.

^k Marinaeus Siculus de reb. Hisp.—Calibut. Down-

ing, const. 3. p. 71.

venues of that bishopricke during the vacancy of the seeⁿ; the most wise prince answered, that he would receive none of the bounty of his bishops; and though at home, this power is butt what he pleases to take; yett in other his territories it is lawfully as large as another prince: as in Burgundy, and Belgia, he hath the same right the king of France once had; as Charles 5. made a statute of mortmaine. “It is not lawfull^o for any ecclesiasticall persons, or sacred places, to take, or have any immoveable thing, without licence of the prince.” And Philip 2. his son, publishing the councell of Trent in the Netherlands, did not lett it passe in all points with the full strength of an ecclesiasticall law; butt restrained it with an expresse clause, that it should not prejudice any priviledge of the king, touching possessary judgements, or ecclesiasticall livings, or nomination therunto^p, and surely the kings of Spayne have the like prerogative in Portugall; bicause the councell of state in that kingdome had the right of presentation to all bishopricks, and abbyes. Sicily^q hath bin held of the see of Rome as a spirituall feud; yett there, the kings of Spayne doe not only claim supremacy of overseeing, butt also superintendency in doing, in ecclesiasticall affayres. Poland^r, and Hungary, were by Benedict 7. converted from paganism; and theruppon wholly att the pope’s disposall in spirituall matters; and though the power of the kings of Poland be limited by an election; yett “they appoint and choose, att their pleasure,”

ⁿ Thuanus, hist. lib. lxxi.—Prudentissimus princeps respondit, se nil de suo pontifici largiri.

^o Thesaurus polit. Apoteles, 49.—Nullis personis ecclesiasticis, vel locis sacris, licet ullam rem immobilem, absque principis licentia, acceptare vel habere.

^p Hugo Linscotan. de regno Portugalliae.—Boter. heroic. quæst. lib. iii.

^q Guichardin. hist. lib. iv.—Baron. annal. an^o 1209.

^r Thesaur. pol. Apoteles, 50.—Herbert hist. Polon. lib. ii. c. 7.—Thuanus hist. lib. lvi. Dicunt, suoq; arbitrio eligunt.

archbishops, bishops and abbots. And the kings of Hungary use the same power as the kings of England doe; wherof a canonist saith, * though of right they cannot, yett the kings of England, and Hungary, bestow benefices by priviledge (as he would have it) from the pope.

Sweden, Denmarke, and the Netherlands have used the like power; especially, when they introduced the reformation of religion, and abolishing the power of the see of Rome. Wheruppon it is said, that Gustavus 1. of Sweden † “ asserted his countrey, from “ the danish and popish slavery.”

Scotland hath bin happy, and showed her power in this likewise. And of Ireland it is affirmed ‡, that there have bin made as many lawes against provisions, citations, bulls and briefs of Rome, as are to be found in all the parlement rolles of England. Besides, Poyning's law enacts there our statute of provisors, and all other lawes against the see of Rome; also in the parlement of Kilkenny: and another declares the publishing of bulls of provision from Rome to be high treason.

* Guymr. comment. prag. sanct. tit. de anal.
pontificiâ servitute affectuit.

† Patriam a danicâ simul et

‡ Sir Jo. Davys rep. f. 88. b.—10 H. 7. c. v.—

32 H. 6. c. iv.—22 H. 6. c. iii.—40 E. 3. c. xiii.—7 E. 4. c. ii.—16 E. 4. c. 4.

We have ordained.

TH A T publique councells are to be summoned is naturall, and needles of dispute : and that it is most proper for the king or head of those councells to commaund and issue such summons in his name, is the right and duety of the king of England ; and of all other princes and heads of those councells, appears by the generall practise of all countryes.

No assembly of persons can be brought together att one time and place, butt by perticular warnings, and summons for their appearance ; the appointment wherof, both in England, and elsewhere, hath constantly bin by the prince or head of them, except uppon some accidents or defection, in the flames of warre or exigency.

As in our civill warres in England, the victors usually summoned a parlement, yett in the king's name ; as that great meeting att Oxford, summoned by direction of the barons, which some hold rather to have bin a councill of war for preparation against the king, than a parlement, and was in the time of civill discord.

The parlement summoned in R. 1. time, was he being in captivity, and for his release. That in the beginning of E. 1. was, when the king, att the death of H. 3. his father, was in the holy land, and came not into England in almost two years after : in the mean time the great lords att home found it necessary to call a parlement in the king's absence, that the peace might be preserved, and the king's succession to the crown be thereby established. So whilst king John of Fraunce was detained prisoner in England, in his absence,

fence, and for his redemption^a, his son did “assemble the three estates, att Paris.”

The trienniall parlement was enacted^b to be summoned by writ without the king's warrant; in case he omitted the time, or by voluntary elections without any writs; butt the time and consequences therof may be grieve enough to remember.

When the Israelites mett in councell without summons from their head Joshuah^c, it was to war against their brethren, the children of Reuben, Gad, and Manasseh, uppon a mistake; which being rectified, the miseries threatned by that meeting were avoyded.

That assembly uppon the summons of the levite by the twelve pieces of his concubine^d, was att a time when there was no king in Israel; and uppon a horrid accident, which caused the civill war then undertaken.

When the elders of Israell^e gathered themselves together without summons from Samuel, and came to him to Ramah, the buisnes was not successfull; nor that of the people's coming to Rehoboam^f without summons, and the issue was a defection from him.

So it was in the case of Sigismond king of Poland and Sweden; when the estates were summoned without him, it proved a defection from him.

^a Haillan, f. 109.—assemble a Paris les trois estats.

^b 16 Car. 2.

^c Jos. xxii. 12.

^d Judges xix. and xx. 1.

^e 1 Sam. viii. 4.

^f 1 Ki. xii. 3.

Butt when the people came together^s to make David their king, there was none to give them summons. So when the kings of England have bin in captivity, absent, sicke, or under age, parlements have bin summoned without their personall direction; butt in their names, or by commiſſion from them. And although severall acts have bin made for the holding of annuall parlements, or oftner if need be; yett those were like as other parlements to be summoned by the king, within the times limited; and the writs to be issued in his name.

Our historians bring this right of the king to summon parlements as high as to Brute himſelfe, who (they ſay)^h did aſſemble the elders of the people in counsell; and in all ſucceeding times, the ſame hath bin obſerved, as our ſtories, records, and writs of ſummons doe ſufficiently teſtify, wherof there will not be occaſion of diſpute.

Cokeⁱ cites one, deſcribing the parlement, among other things to note, “ That it is not held att certain times, butt summoned by the “ king, when he thinkes fitt:” the ſame is obſerved^k by Polydore Virgil. Every king in the beginning of his reigne uſeth to hold a parlement, and afterwards, “ as often as the occasions did require, he summoned them att his own pleaſure.” My lord Ellesmere^l publiſheth the ſame doctrine in his ſpeech uppon the caſe of the poſt nati. “ Certaine it is (ſaith he) it hath bin the wiſdome of the kings of this realme to reſerve in themſelves that ſupreame power to call their nobles, clergy, and commons together, when they ſaw great and

^s 2 Sam. ii. 4.

^h Galfr. Mon.—Majores natu convocavit.

ⁱ Epist.

^g rep.—Statis temporibus non habetur, ſed à rege pro arbitrio indicitur.

^k F. 477.

^h. 1.—Quoties res poſtulat, ſuo arbitratu illud ipſum convocat.

^l F. 110. c. of

the poſt-nati.

urgent causes. And the same is acknowledged^m in the preamble of the act for the trienniall parlement, that the summoning of parlements is a right belonging to the king, and hath bin so in his praedeceffors. And it hath scarce bin otherwise in any nation. Among the Ebrewes we find many instances of summons of publique counsellis, by the prince or head of them, and that both beforeⁿ and after the institution of the great sanhedrim; as when God saith to Moses, "Goe and gather the elders of Israel together:" and when Moses and Aaron assembled all the congregation together; and when the Lord said unto Moses, "Thou shalt gather the whole assembly of the children of Israel together."

In the institution of the great sanhedrim Moses is commaunded^o by God, "Gather unto me 70 men of the elders of Israel." The like was done by his successor. Joshua called for all Israel, and for their elders, and for their heads, and for their judges, and for their officers, &c. and in the next chapter, Joshua gathered all the tribes of Israell to Shechem, and called for the elders, &c. So Samuel assembled the people unto the Lord, in Mizpeh. And so David assembled all the elders of Israel, and all the princes of Israel. And Solomon all the elders of Israel. And Jehoiada gathered the levites and the chiefe of the fathers. And Josiah sent and gathered to him all the elders of Judah and of Jerusalem. We find a patterne of our writs of summons where Hezekiah sent to all Israel and Judah, and wrote his letters to the people, to meet to advise

^m 16 Car. 1. c.ⁿ Exod. iii. 15, 16. and xix. 7, &c.—Num. i. 17,

18.—viii. 9.

^o Num. ii. 16.—Jos. xxiii. 2.—xxiv. 1.—1 Sam. x.

17.—1 Kings, viii. 1.—2 Chron. v. 2.—xxiii. 2.—2 Ki. xxiii. 1.—

2 Chron. xxx. 1, 2.—Acts, xxii. 30.

about a great buisnes, the celebration of the passeover. Of the like nature was that summons by the chiefe captain, or pro-rex, sett over the Jewes by the Romans; of whom it is said, that he commaunded the chiefe priests and all the councill to appear, and brought Paul downe, and sett him before them.

Thus Abimelech is said to call, that is † to summon his servants; whom expositors agree to be his counsellors. Thus the Graecians and Romans had their councills summoned by their kings, and chiefe officers. So it is in Germany, Sweden, Denmarke and those northerne countryes; summons of their publique councills is by letters from the emperor, or king, who appoints the calling of them.

The parlement of Scotland is appointed^p, and solemnly called by the king, att his pleasure. And in Ireland they are called att the pleasure of the kings of England, and usually by the deputy there.

In France their publique councills were also summoned att the pleasure of the king, as appears^q by that law, "That the three estates cannot assemble themselves, butt by our letters patents;" when the king pleased to call them, they were to meet, and not without his summons.

The like course was held^r as to the antient publique councills of Arragon, they were summoned att the pleasure of the king, and

† Gen. xx. 8.

^p Cambden Scotland, f. 7. — Ireland, f. 72.

^q Code

Henry, lib. xx. tit. 2. ley 2. — Les trois estats ne pourront eux assembler, si ce ne soit par nos lettres patentes.

^r Resp. Hispan. f. 122.

Comitia Arragoniae a quoquam alio praeterquam ab ipsis regibus haberi non possunt.

could not be called by any other; and forty days are allowed for the appearance of the members summoned.

Butt to enter into a recitall of more perticulars uppon this argument, would be unnecessary: the course is so well knowne, and so universally practised in all countryes, for the king or head officers to ordein the meeting of publique councells and assemblyes, as it is with us in England, that I shall forbear to inlarge uppon this subject.

Our parlement.

IT will be requisite to know the meaning of this word parlement now made a latine word, in this writ. When we say in our expressions, the parlement, and in the writ, ^aour parlement, we intend by it the great assembly, of the king lords and commons, met in publique councell. We use this word for the assembly of the king and the three estates. “^bTo hold the estates,” in France, is the same thing that was formerly to hold the parlement.

In writs and judiciall proceedings, as in this writ, by “^ccommon councell” is meant the parlement; both these words being heere used for the same thing: and that which we, and the Scotts, agreeing doe name a parlement, the French doe call “the estates^d,” and “the assembly of the estates;” bicause with them, as with us, the estates of the land doe meet in councell. And whether lawes be said to be made by the king and his barons, his discreeter men, by common consent, by common councell, by the wise men, by the councell, and the like; it is therby meant, that they are made by parlement.

Some statutes^e seeme to passe under the name of the king only; yett were made with the assent of the other estates, and comprehended under the names of acts of parlement.

^a Quoddam parliamentum nostrum.

^b Minshaw verbo parlement.—Du

Haillan, f. 185.—Tenir les estats.

^c Commune concilium.

^d Les

estats, l’assemblée des estats.—Lamb. courts, f. 234.—f. 271, 272.

^e Stat. Gloucest. 6 E. 3. 3 E. 1. et al. in 8 rep. Prince’s case.

Other statutes^f acknowledge that of Gloucester to be made by the more discrete men of the realme; and the other, by the king calling together the earles, barons, and his counsell. It is noted by Brooke, that although magna charta, and other statutes, doe run in the name of the king only; yett the other two estates^g are supplied in good understanding; and they are knowne by the name of acts of parlement.

Some difference hath bin of opinion^h, whether by the word "counsell" be meant the parlement; as where ordeil is taken away, the record is, "It was provided by the king and his counsell," whether this is by act of parlement? wherof Spelman that learned knightⁱ makes a doubt, that "the word parlement doth not properly carry the meaning of it." Sometimes "the king and his baronage" is taken for, and meant the king and all his subjects, or the whole parlement representing them; and so it comes from "baron," as it interprets a man or tenant; the king and his men, as it is said of Abimelech and his servants: and if the parlement be intended by "the king and his baronage," it may be meant as well by "the king and his counsell."

The statute of the templers^k is, "that the great men of the king's counsell being called together," as well justices as laymen in parlement: and in severall other acts of parlement † the word

^f Stat. Westm. 13 E. 3.—Stat. Quo warranto. 20 E. 3.
just. c. i. §. 1.

^g Mirroir of
^h Abbot of Strata Marselles, c. ix. rep.—Provisum fuit per regem et concilium.

ⁱ Spelman glossary, f. 396.—Parliamenti nomine non proprie continetur.—Rex et baronagium suum.—Tit. hon. Seld. f. 278.—Gen. xx. 8.—Rex et baronagium.—Rex et concilium.

^k 19 E. 2.—Convocatis majoribus de concilio regis.
† 8 R. 2. Tit. avowry, 260.—H. 3. E. 1.

councell is used, and does justify the opinion, ‡ that when we speake the word parlement, we meane therby the same thing which antient authors, records, and histories doe terme the generall councell, the great councell, the common councell, &c. And the saxon names for their great councell did signify the same thing as parlement doth with us : and those councells called by the names before remembred, and many others of the like nature are meant by the word parlement, and comprehended under that expreffion.

From whence this word parlement is derived may be also requisite to be knowne, for the better understanding of matters relating to it. The words parlement, parliament, and parlament are synonima, and promiscuously used by us in our english expreffions, for the same thing, our great publique councell of the nation.

That derivation of parlement¹ from the lamentation of the peerres when they meet together, is a sad etimology. More probable that author may confesse it to be^m, from the french words “ to speake one’s minde,” which he saith is disliked by Lawrence Valla, uppon what grounds I cannot guesse. The Italians use the word parlamento for speech : and the French use it in severall senses ; as, “ they did treat upon the rendring of a place—and “ the besiedged did demaund a treaty, or parley,” from whence is our english word parley in the same sence : when † the kings of England and France had an interview neare Gisors, there it is said

‡ Co. epist. 9 rep.—Spelman glossary, f. 314.

¹ Lambard’s courts, f.

235.—Parliamentum, parium lamentum.

^m Parlement, parler la ment.—

Boccalini pte 2. f. 94, 95, & 328.—On a parlementé sur la reddition de la place.—

Les assieges demandent a parlementer.

† Du Haillan, f. 283. b.—La ils parlementerent.

“ they

“ they conferred together;” and in another place, ‡ that king Richard of England and king Charles of France “ did parlement together.” The most agreeable opinion to our authors brings the derivation of it from the french word “ parler,” and that from the Greeke, of the same signification with parler.

The authority of Coke is ⁿ, that the parlement is so called for two causes. 1. Bicause every member of it hath a judiciaall place, and should there, without any spirit either of contradiction or smoothing, speake his minde. 2. The lawes there made are called acts of parlement, bicause they are to be expounded by the judges according to the mind and true meaning of the speakers, the makers of them: as a testament so called, bicause it is according to the mind of the testator; and an arbitrement, bicause it is according to the mind of the arbitrator. Thus the name of the jewish sanhedrim is said to be an hebraisme taken from the greeke; so is our word parlement an english word taken from the French. And doubtles there can scarce be a word for such an assembly, or councill, more comprehending the duety of those who are members of it; according to that passage of the levite, “ Consider of it, take advice, and “ speake your minds;” which the French reade with the word “ parlementez.”

The Saxons called their publique counsellors, “ ° the counsellors of wise men and the great counsellors,” and the like; butt faith our au-

‡ Parlemerent ensemble.—Lupanus, lib. ii. f. 465.—a verbo francico parler, et hoc a παραλάλειν.

ⁿ 4 Instit. tit. parlement.—Testamentum testatio mentis.—Arbitramentum secundum mentem arbitratoris.—Haebraismum è Graeco sumptum, συνέδριον sanhedrim.—Jud. xix. 30.—Penfer sur cela, consultez et parlementez.

° Jani Angl. Seld. f. 124. Witenagemotes, Wicil gýnoder—mutato demùm à Gallis parlamentorum nomine.

thor, "changing att length, from the French, into the name of
 "parlement." Agreeable to this it is sayd, ^p "That by a name
 "not very antient, out of France, it is called a parlement." That
 this generall publique councill was knowne to the Saxons ^a by the
 names of "synod, great synod, great councill, assembly of wise men,
 the meeting of all the wise men," &c. is agreed by our antiquaries;
 which proves, that the word "parlement" was not in use heere before
 the norman invasjon; and for the perticular time of introducing it
 afterwards, there is some difference of opinion. My lord chiefe
 justice Coke rectifyes a mistake, that the word parlement should
 first creepe in about 3 E. 1. in the statute of Westminster 1, where
 it is called "the first generall parlement, by assent of the bishops,
 "earles, barons, and all the commonaltie," &c. butt our author
 saith truely, "that the word parlement was used heere long before
 "that time:" and in a parlement 9 E. 2. it is said, ^p "that wheras
 long since, in the times of our progenitors, kings of England, "in
 "divers of their parlements," &c. which could not have bin said,
 if the name had first begun in his father's time. That this must
 needs be higher than the time of E. 1. appears, bicause the plurall
 number "progenitors and kings" cannot be meant by E. 2. of his
 father only; and it is said in a record of E. 1. ^p time, "bicause the
 "people comming to parlements," &c. which being but five
 years after 3 E. 1. makes it the lesse probable to be then begun.

^p Coke, epist. 9 rep.—Non ita vetusto nomine ē Gallia mutuato parlamentum dici-
 tur.

^a Synod, Micel synod, Micel gemot, pzena gemote, ealpappe. Cambd.
 rem. f. 23.—Coke supra.—Seld. 2 Tit. hon. f. 613.—Lamb. courts, f. 238.

^p Co. 8 rep. Princes cas.—Lamb. courts, f. 236, 237.—In diversis parliamentis suis,
 &c.

^p 8 E. 1. Rot. claus. m. 6. sched.—Por ceo ke le gens venent al parle-
 ment.

Butt to cleare this, the word is found in Fleta, an authentick author of our law; and in our records¹ before E. 1. time. And our historians use the word as in H. 1. time, “after the manner of France (saith one²) they call it a parlement.” Lambard holds³, it was transported hither shortly after the time of the conquest (as he calles it): another holds⁴, that the word parlement was used heer in the time of Wm. 1. and of Edward the confessor; and this seemes to have confirmation⁵ from severall of our authors. And Sir Roger Owen is of opinion⁶, that much of the french manners, language, and names of things was introduced heer by Edward the confessor, who had lived so long among them, that he was almost wholly french.

With the name parlement, some would have to be accompanied the originall of our parlements: the most puiſne opinion is of them who will afford our parlement no higher a pedigree than the time of our king E. 1. which they ground from the statute of Westminster 1; which hath bin before touched, and the mistakes therof evinced, and that our parlements are of much elder date, in the name as well as the originall of them, than this king's reigne.

If the language of France were in frequent use with us, before E. 1. time; it is the lesse probable, that he should be the first introducer of any thing, perticularly of the parlement, in reference to that language. I omit the more antient times of H. 1. W. 1. and

¹ 32 H. 3. Rot. claus. m. 13, 14. and 34 H. 3. Rot. parl. * Polydore Virgil, lib. xi. f. 177. — More gallico parlamentum appellant. * Lamb. courts, f. 236, 237. * Co. Comment. on Litt. f. 110 and epist. 9 rep.

² Brompton. — Ingulphus. — Mirroir of Just. * Sir Rog. Owen, MS. c. x. &c.

Ed. the confessor, wherof I shall have further occasion to speake ; and shall heer keepe myselfe to the times of some of this king's neere predecessors, when the french language was in great use and esteem with us. Matthew Paris writes, that he was in daunger of losing his living, bicause he understood not the French. H. 2. and king Steven were meere French, ^a had large dominions there ; and the number of French, and the matches with them, was then so great, that one could hardly know who was French, and who English.

In R. 1. time Brackland writes, that preaching was in the french tounge in England. ^b In king John's time it was accounted as the mother tounge. Uppon the like grounds, and in those times, the english language was in great use in Burdeaux, and in other parts of France. And it may more properly be conjectured, that our english language, or customes were transported into France, or that those of France were brought into England by some of the progenitors of E. 1. than by himselfe. Butt this will receive a further discussion in another place ; where it will appeare, that our parlements had not their originall from this king, butt (are) of much higher antiquity. And it might be wished, that no english spirits would be so treacherous to the honor of their native government, and countrey, as to intertaine such despicable and mistaken thoughts and surmises of that, which is so great a bulwarke, and defence of their just rights and liberties.

Tacitus speakes of some, of which number I am not, whose fortunes ^c being augmented by new acquisitions, could not indure the old formes and lawes ; butt were altogether for new constitutions,

^a Gervasius Tilsberiens. hoc temp.

^b Giraldus Cambrenf. hoc temp.

^c Novis rebus aucti.

as the most prudent means to preserve their new acquired wealth and power. Such use to asperse our lawes and government; and calumniate what they doe not, or desire not, to understand, least it might clip the wings of their ambition, and keepe their power within limits; whereas they are more^d for “the judgement of a “good man,” than of good lawes, and have commonly no ill opinion of themselves: whom I wish better informed.

My next step shall be touching the original of our parlements from our king H. 1. allowed unto it by some authors, moderne chroniclers of our english story; butt no higher will they goe. Their ring-leader is Polidore Virgil^e, who in the life of H. 1. writes with this confidence, and to this purpose. “This (saith he) I have “expressely to say, that before this time the kings were not wont “(except very rarely) to cause assemblies of the people to be made “for consultation; so that rightly it may be said, that this was of “Henrye’s institution.”

This error is pursued by our chronicler Speed^e, who saith that H. 1. laid the foundation of our parlements; and that the english kings in former times ordered the affayres of the common wealth by their edicts, by their officers, and by the governors of every countrey; and seldome had the joint advice of their people. This is followed by Martin^e, who affirmes, that H. 1. devised and ordered the manner and fashion of a court in parlement; and this opinion is believed by many.

^d Arbitrium boni viri.

^e F. 476.—Illud appositè dicere habeo, reges ante haec tempora non consuevisse populi conventum, consultandi causa, nisi perrarò, facere; adeo ut ab Henrico id institutum jure manasse dici potest.

^f P. 457. P. 35.

^g Chron. Mart. f. 31.

As for Polydore Virgill, his errors are not a few; and who so will take the paines may see them, and the correction of them by Sir Roger Owenⁿ, who saith of him, that "his ignorance was bold, and his boldness triviall." He was a reteiner to H. 8. an italian gentleman, who taking uppon him to write of the histories, lawes, and customes of England, (wherin he was wholly ignorant) borne and bred a stranger to them, and taking up on trust from others what he putt out in his own name, his mistakes are the lesse to be wondred att: nor are they in this point alone, butt in fundry others; as where¹ he saith, "that Wm. the conqueror appointed sherifs and justices of the peace, erected tenures, and brought in tryalls by 12 men, &c." when it is apparent by our bookes and records, that the same things were in use heere long before the time of W. 1. except justices of the peace which, Polydor saith, were brought in by the conqueror; wheras it is evident by the act it selfe, that they were not introduced untill about 300 years after the time of W. 1. by E. 3.

Polydore saith in another place, that by the statute 36 E. 3. matters are to be inrolled in English; which is against the expresse words of the act, that they shall be entred in Latine: many other grosse mistakes might be remembred of this author; butt I passe them and him by, supposing his authority not to be much swaying. He seemes forgettfull of his own expressions where he saith first "perrarò, very seldome," which implyes that sometimes they had these councells, before the time of the perrarò; and yett he concludes, with his countrey confidence, that they had these councells from the institution of H. 1. only.

ⁿ Sir Rog. Owen MS. c. viii, ix, x, xi.—Cujus ignorantia audax, et audacia futilis.

¹ Polydor. hist. Angl. lib. ix.

^{*} Stat. 1 E. 3. c. xv.

For our own countrymen who abett his error, to the staine of our nation's honor, they are lesse to be excused than the stranger; unles their meaning be, that the commons were not in parlement before the time of H. 1. as others also have affirmed (which is a convenient time of praescription, for their presence and interest in our publique councells). Butt I shall have occasion in another place to show, that this is also a mistake; and that the commons have bin an estate in our generall publique councells in all times: and if they have not bin so, or possibly might not be so constantly present in much antienter times in those councells, as the greater men were; yett this is no argument for that positive assertion, "that our publique council had its institution from H. 1. and not before." If they intend, that the word "parlement" was coyned in H. 1. time, it is the lesse error; butt of this is spoken elsewhere. It seemes, that the saxon lawes and histories were not much perused by these gentlemen; who alleadge that our kings used to governe the commonwealth by their edicts and officers, without such councells: wheras nothing was more frequent, in the time of the saxon kings, than to hold parliamentary councells almost yearly; and scarce was any matter of importance determined without them; as is evident by all our historians of that time, and by sundry of the acts themselves of those councells yett extant in the saxon idiome.

We find, in one of our bookes¹, an act established att a parlement holden in the reigne of W. 1. pleaded, and adjudged to be good, and putt in execution accordingly. This king W. 1. had severall parlements; ^m one in the 4th yeare of his reigne, another in his 5th yeare, another in his 7th yeare by his brother; the which appear in the severall historians of those times, and is sufficient testimony, that

¹ 21 E. 3. f. 60.

^m 4 W. 1.—5 W. 1.—7 W. 1.

this councell was not first instituted, nor had its originall from H. 1. who having conquered Normandy from his brother Robert, and being a learned king (as his name Beauclerke testifies) and studious of lawes, as Ivo calles him "a speciall establishe of justice", was so farre from introducing a new forme of government in England, that he liked it so well as to establish the english lawes in Normandy.

Butt I must hasten to another opinion, which hath waxed more generall and confident in our age, than in former times; that our parlements, lawes and government, were brought into England by duke William of Normandy, and consequently the originall of them to be from him; and they have divers forrein authors^o; and many of our owne countrey men^p, uppon whose credit and authority they build the confidence of this their opinion. Yet notwithstanding those many and eminent learned authors, cited in the margent, are concurrent in this opinion; I shall for the honour of my countrey, with modesty and submission to others judgements, presume to sett downe the grounds of the different opinion, uppon examination of the ground of theirs. 1. They alleadge that W. 1. is surnamed the conquerour; and that by his conquest he changed the government, lawes, and councells of this nation; and his successors reckon the beginning of their reignes from the conquest.

"The argument^q from a may be to a must be will not hold;" as bicause Wm. 1. as a conqueror might change the lawes, therefore

ⁿ Severius. — Gulielm. Brito. — Armoricus. — Rutelarius, &c. ^o Jovius — Æmilius. — Bodine. — Hottoman. — Dynothus. — Volateran. — Berault. — Berkley. — Choppinus. — Uspargensis. — Malines. — Polydore, &c. ^p Paris. — Malmesbury. — Mat. Westm. — Foxe. — Cofins. — Twyne. — Heyward. — Milles. — Fulbeck. — Cowell. — Ridley. — Browne. — Speed. — Martin, &c. ^q A posse ad esse non valet argumentum.

he did change the lawes: the conquering of the land is one thing, the introducing of new lawes is another thing. Butt there is direct prooffe to the contrary of this argument. W. 1. never furnamed himfelfe the conqueror, nor was fo called in his life time; as may appeare by all the letters patents, and deeds that he made, yett extant some of them, and wherin he is only called “ Wm. the king, duke of Normandy, &c.” So our antient historians call him. In the title of Nubrigenfis booke, he is furnamed William the bastard: Malmesbury calles him Wm. the first; Hoveden, Wm. the elder; in the patent of H. 1. electing of a bishop, he stiles himfelfe Henry the son of king William the great; and so Malmesbury calles him. Adam de Meroneth saith, “ that this word “ conquest” was found out to denote, and distinguish the certaine Edward; because two of the same name were predeceffors to E. 3. and to the conqueror who claymed the crown as heir to Edward the confessor: butt (saith he) “ we call him the conqueror, for that he overcame “ Harold in battle.”

If W. 1. claimed to be king of England as fucceffor, and adopted heir of Edward the confessor, by his will, and by Harold's renouncing his title by oath; there is the lesse colour for that argument, that as a conqueror he changed our lawes and parlements.

It appears, that the barons of England did homage to him as a fucceffor; and he relyed on the English in his forein wars. Volaterus writes, that “ he was made heir to the confessor, and was uncle to “ him.” Another writes, “ that Edward by his will left England “ to him.” Pope Alexander 2. fent him a banner, as a wittnes

Willielmus rex, dux Normaniae.

1 E. 3. an^o 1327.

Paulus

Æmilius. — Fulgafius.

that,

that, with a safe conscience, he might expell Harold the tyrant; bicause the crown was due to him by the confessor's will, and Harold's oath. And many^u of our authors are agreeable heerunto, in the severall stories of those times. The antient deeds also of the abbey of Westminster (wherof I had the custody) do testify the same.

King W. 1. in his charter to that abbey, setts forth his title to the crowne, thus. “^w By virtue of the graunt of my lord and kinsman, “ the glorious king Edward, I William king of England,” &c.

His 2 charter^x is thus, “ In honor of king Edward who made me “ his heire, and adopted me to rule over this nation,” &c.

The charter of H. 1. to this abbey, is, “ In honor of Edward my “ kinsman, who adopted my father and his children, to be heirs to “ the kingdome,” &c.

The charter of H. 2. to this abbey is to the same effect. In the charter of W. 1.^y of the liberties of St. Martin's the great, in the MS. therof are these words, “ In example of Moses who built the “ tabernacle, and of Solomon who built the temple; I William, by “ the disposition of God, and by hereditary right of consanguinity, “ king of England,” &c. he doth erect a sanctuary.

The charter of his son H. 1.^z calles himselfe “ the son of king “ William the great, who by haereditary right succeeded king “ Edward.”

^u Gemeticensis.—Walsingham.—Malmesbury.—Huntingdon.—Ingulphus.—Matt. Paris.—Pike.—Wendover.—Caxtone.—Gisborne MS.—Fortescue.—Ikham MS.

^w Beneficio concessionis domini et cognati mei, gloriosi regis Edwardi, &c.

^x 15 W. 1.

^y An^o 1088.—Ego Willielmus Dei dispositione et consanguinitatis haereditate Anglorum basileus.

^z Lib. Ely.

As to his pretence of title by the will of the confessor, Mathew Paris saith, that "the will was void, the devise being without the consent of the barons." To which Sir Roger Owen answers, that probably the law might be so in H. 3. time, when Paris wrote; and so was taken to be by the statute of Carlisle, and in the case of king John. Yett (saith he) att the time of duke William's invasion the law was taken to be, that a kingdome might be transferred by will; as that of Sixtus Rufus, that Asia came to the Romans by the will of king Atalus^a, the words wherof are; "let the people of Rome be heir of all my goods:" Bithynia came to them by the last will of the king Nicomedes, which is remembred by Eutropius, together with that of Lybia. Cicero in his orations telles us, "that the kingdome of Alexandria, by the last will of their king, was devolved unto Rome." And Presitagus, king of the Icenii in England, did give his kingdome by his will unto the roman emperor. This king W. 1. is said to give England by his will to his younger son Wm. Rufus: and king Steven claimed by the will of H. 1. The lords of the councell, in queen Marie's time^b, wrote to her, that queen Jane's title to the crown was good by the letters and will of E. 6. and their father H. 8. had power, by act of parlement^c, to declare by his will his successor. And as this case was by act of parlement, so duke William, after he had conquered Harold, was by the generall consent of the barons, and people of England, accepted for their king; and so his title by will confirmed. However it carried a shew of justice, and he both claimed and governed the kingdome as an heir, and successor; not as a conqueror, but according to the lawes of the nation, which he found heere and confirmed.

^a Annaeus Florus—*Populus romanus bonorum meorum haeres esto.*

^b Camb. annales q. Mary.

^c Stat. 35 H. 8. c. i.

Our author further affirmes^d, that there is not any of our historians that lived in the space of 200 years immediately after the Normans invasion, which doe report our lawes to be taken away, and the norman customs introduced by duke William : some doe speake of the alteration of some part of them, and the bringing in of some few norman customes effectuell for the keeping of the peace.

Roger Wendover and Matthew Paris are the first of the monkes, who (as our author faith) hatched these addle egges : butt that the antient lawes and government of England were confirmed by duke William, is testified by many of our writers.

Jornalensis faith, that out of the Merkenlage, West-saxonlage, and Danelage the confessor composed the common law which remains to this day. Malmesbury, who lived in duke William's time, faith, that the kings were sworne to observe the lawes of Edward the confessor, so called bicause he did observe them most religiously. Ingulphus, who was in good favour with W. I. faith in the end of his chronicle, " I Ingulphus brought with me from London, to my
 " monastery (Croyland) the lawes of the most righteous king Ed-
 " ward, which my lord king William did commaund, by his pro-
 " clamation, to be authentique and perpetuall; and to be observed
 " throughout the whole kingdome of England, uppon paine of most
 " grievous punishment: and he commaunded them, in the same
 " language they were written, unto the justices; least by reason of
 " ignorance we should happen to breake them." Hoveden writes,
 " that William the conqueror allowed the lawes of Edward the con-
 " fessor; not that Edward was the first allower of those lawes, for
 " they were used in king Edgar's dayes."

^d Sir Rog. Owen, MS. c. xi.

The lieger booke of the abbey of Waltham commends duke William, for restoring the lawes of the english men, out of the customes of their countrey; Radburne a chronicler followes this opinion: and these lawes of Edward the confessor are, for the most part, the same which are contained in our great charter.

A MS. intituled (*de gestis Anglor.*) saith, "that att a parlement att London 4 W. 1. the lawyers were present, that the king might heare their lawes, they being formerly used in king Edgar's dayes;" and mentions the 12 men out of every countey, to deliver truely the state of their lawes: which is also remembred by severall other of our authentique authors; and that he was sworne to maintaine our lawes.

The prohome of the grand customary of Normandy, speaking of William the bastard king of England and duke of Normandy, saith, "that St. Edward king of England, having no heire, appointed William to be his heir of England; who, having conquered Harold the usurper, obtained the kingdome under this condition, that he should inviolably observe the lawes given by the said Edward." If then we will believe the french writers themselves, the charters of W. 1. and his succeffors, the historians both english and french by the testimonies before cited, and by others which will be applicable to another subject, and by divers others which for brevity's sake are omitted; it will not be obscure, that the originall of the parlement, lawes and government of England, is not from king W. 1. unduely stiled the conqueror.

* Hist. of tithes. Seld. et Tit. hon. — MS. chron. in biblioth. Cotton. cum lib. Ely.
— Regist. Sti Albani. Mat. Paris, &c.

Butt the contrary opinion, or rather fancy against the honor of our parlement and lawes is pressed yett further; that if duke William, as a conqueror, did not introduce att first his lawes, and forme of counsell heere: yett the Normans who joyned in his enterprife, and flocked hither after his successe, grew so numerous and powerfull, that they would be governed by no other lawes or counsell: butt their owne; which they fetched out of Normandy, and established in England.

To this is answered, that they did not conquer England, as is shewed before: butt admitting they did, yett they changed not our lawes and parlement; wherof that which is said before, and that which followes may give some satisfaction.

They conquered the isles of Guernsey and Jersey, yett altered not their lawes, which are in their locall customes like unto ours. In Sicily, Naples, and Apulia, where they were conquerors, yett the antient lawes of those countreyes were continued.

Between the conquest of Normandy itselfe by Rollo, and the invasion of England by duke William, there were not above 160 years: that of Normandy was about the year 912, that of England 1060. It is not then consonant to reason, that those norman pagans, descended from divers barbarous nations, should, in the time of 160 years, establish such excellent lawes, so different from the french lawes, and all parts of the world except England; and they to be att the first, not only fitt for a dukedome, butt for a kingdome which in those dayes was the second in Europe, for antiquity and worth, by confession of most forein historians.

Besides,

Besides, those lawes, which the Normans had before the time of duke William, were quite different from those in the customary of Normandy, and from those in England : as their law that the husband should be hanged if his wife were a thiefe, and he did not discover it; and they had the tryall of ordeil for theft; the meaner people were slaves; and the like. Wigornienfis saith, that the Normans who came in with queen Emma, the wife of Ethelred, were so hated of the English for their injustice, and false judgements, that, in the time of king Canutus, they were for this cause banished. It is the lesse probable, being so unjust themselves, they should be the introducers of so just lawes as those of England are; that so cleer streames should flow from so corrupt a fountaine, as their originall..

Sabellicus a venetian historian writes, that the Normans in their manners and customes are of the english fashion. And Polydore, forgetting what he had wrote before, saith of H. 7. that when a doubt was made uppon the proposall of marryage of his daughter to Scotland, that therby England might in time be subject unto Scotland; this wise king answered no; and that England, as the greater, would draw to it Scotland as the lesse, and incorporate it to the lawes of England, as it had done Normandy though the owner thereof was conqueror of Harold in England.

Another argument for the opinion, that the originall of our lawes and parlement is from the Normans, is taken from the conformity and likenes of the lawes, and forme of our english parlements, to those in the graund customary of Normandy, which are almost the same. A more probable conjecture might be made, that the originall of our lawes and parlements is from the Gothes, Swedes, and those northerne people whose lawes, and especially the forme of their
publique

publique councells is, to this day, exactly the same as our's was. As to those in the customary of Normandy, the writer of the praeface to that booke saith, that "it contains only the lawes and customes which were made by the princes of Normandy, with the counsell of their prelates, earles, barons, and other wise men." If this customary were composed after our E. 1. time (as some^f hold it was), then it cannot be that our lawes and parlements should be derived from thence. Butt that was (as some hold) a meere translation of our law booke Glanvill, as the booke Regia majestas of the lawes of Scotland is; and the like was of the lawes of Burgundy. The first establishing of the customary of Normandy is thought to be in H. 1. time; and afterward againe, about the beginning of E. 2.

That H. 1. did establish the english lawes^g, in Normandy, hath bin before noted; and that the lawes in the customary of Normandy are the same with the lawes collected by Edward the confessor^h: there is some testimony from thence, that all those lawes of Normandy came from the english lawes and nation.

In the customary is a chapter of nampes, or distresses; and decreed, that one should not bring his action uppon any seifure, butt from the time of the coronation of king Richard: which must needs be our king Richard 1. bicause no king of France was in that time, of that name; and the words nampes and withernamps were faxon termes, taken out of the english lawes, signifying a pawne or pledge, or distresse. The learned knightⁱ shoves att large, that livery of seifin, licences, or fines for alienation, daughters to inherit, tryalls by juries, abjurations, utlaries, coroners, disposing of lands by will, escheats,

^f Sir Rog. Owen MS. c. xiii.

^g Sequerius.

^h William de Alençon.

—Rouile. — Comment. sup. custom.

ⁱ C. xiv. (Sir Roger Owen?)

gaoles, writs, wreckes, warranties, catalla felonum and many other parts of our law, and parlements themselves were in being heere, before the norman invasion; which is testified^k by many of our authors. And which putts it further out of scruple, there are yett extant the MS. themselves of the faxon lawes made in the parliamentary councells held by them, which lawes are in the language and character of those times, and conteine in them many of those things which are in the norman customary.

Some are of opinion, that there was a former establishment of our lawes in Normandy, before the time of H. 1. and that it was by Edward the confessor, who (as all the writers of his history doe agree) was a great collector and composer of our english lawes. He lived a long time in Normandy with his kinsman duke William, who was willing to please him, in hopes to gaine his favour, that he would appoint him his successor; Edward having no childe, and duke William being his neereft kinsman, and most kind to him: and heerin his designe and expectation did not fayle him, nor his humoring of the confessor prove fruitles. Amongst other passages it is said, that the confessor finding Normandy without a settled government, and wanting lawes, the Normans not having bin long there; king Edward advised his cousin to receive, from him, the lawes of England which he had collected; and to establish them in Normandy: to which proposition the duke and his lords readily hearkened, and accepted from king Edward the english lawes, and established them in Normandy for the good of their people; and therby also putting an obligation uppon Edward.

^k Lib. de antiq. Brit. legibus. — Co. 4 instit. — Co. on Litt. f. 109, 110. et epist. 9. — Seld. — Pim. — Lambard, &c.

Butt it is then demaunded, how came the lawes in the customary to be written in French, if they were had from England? The reason is given, that Edward understood the French as well as the English; and the Normans were now become French, and understood that language butt not the English; therefore, the more reason to have those lawes written in French: and the normans being a rough and martiall people had not many clerkes among them, of their own countrey men, butt made use of those French who lived among them, and with whose language the Normans began to be incorporated; and theruppon, it is supposed, the lawes in the customary were written in that kind of French which that time afforded. Others hold, that the lawes were not then written in French by the confessor; butt att the second establishing of them by H. 1. that then they were putt into the french tounge.

It is certaine, for the confirmation of this opinion and cleering of it, we find in the prohome of the customary, which is intituled¹ “ the description of Normandy,” these words; “ that St. Edward king of England was the maker or giver of these customs of Normandy:” as it is witnessed by Chronicon chronicorum, where it is said, “ that St. Edward also gave the lawes to the Normans when he was long harboured there;” and that Edward made the said lawes of England, and of Normandy, appears (saith he) sufficiently by the uniformity of them; for which he cites severall places, as of appeales^m, “ to prove any thing by the credit of 12 men of the vicinage or neighbourhood;” which he saith remaines in Normandy. Polydore contradicting himselfe saith, in H. 6. time, that the duke

¹ Descriptio Normanniae. — Hujusce Normanniae consuetudinis latorem sive datorem sanctum Edwardum Angliae regis, &c. ^m Ad probandum aliquid per credentiam 12 hominum vicinorum.

of Bedford called together the chiefe men of all the cittyes of Normandy, and delivered, in his oration to them, "the many benefits which the English had afforded to the Normans; especially in that the English gave them their lawes and customes."

If then we will believe themselves, and the testimonies before remembered, it will be evident, that the lawes, and forme of parlements, were carryed out of England into Normandy; and not brought from thence into England; and consequently, that the originall of our parlements is not from the Normans.

Yett still, some are so further zealous to defile their owne neast, and to disparage the lawes and parlements of England, which are their birth right; that though it will not be graunted, that our lawes and parlements were given and imposed by a conqueror: yett they would have it yielded, that when our kings were possessors of the greatest part of France, together with England, that then the lawes and parlements of France were brought in hither, and became the originall of ours; which they inforce from the french word parlement and bicause our lawes, and law bookes, and many acts of parlement to this day and heertofore, were and are in the french tounge^a. And they remember the statute of E. 3. which recites the mischiefes of the lawes being in French; and enacts, that thereafter they shall be pleaded, &c. in English, and inrolled in Latine: wheruppon is concluded by some^b, that both the french lawes and language were brought into England, and settled heere.

^a Fortescue. — Ingulphus, &c. — 36 E. 3. c. xv.
— Speed, &c.

^b Lambard. — Polydore.

In answear wherunto may be offered, that doubtles this was not done by the Normans, as hath bin shewed; and the french tounge^p was not the language of duke William, and his people. The normans not having bin past four discents in that part of France, it is not probable, that in so short a time they should lose their native tounge, and receive another of a country conquered by them: they came from Sweden, Norway, Denmarke, and those northerne countreyes; and therefore were called Normans. And between the languages of those countreyes is great affinity, butt none between their dialect and the french. Ulphilus saith^q that the dutch tounge came from the Gothes; Jornandes, that the Gothes tounge came from the Dutch; none say, that between these and the French is any affinity. The french tounge was used in England before the norman invasion; wherof Beda affirmes, that in the year 640 it was the custome of England to send their daughters into the monasteries of France, to be brought up there; and that Ethelbert, Ethelwulph, Etheldred, and other faxon kings marryed into the royal bloud of France. Glabor notes, that before the time of duke William the Normans and English did so linke together, that they were a terror unto forein nations. Ingulphus saith, that the faxon hand was used untill the time of Alfred, who, being brought up by french teachers, used the french hand; and he cites many charters of Edred, and Edgar, written in the faxon and french hand; as the booke of Domesday is. Edward the confessor, by reason of his long being in

^p MS. Sir Rog. Owen, c. x.

^q From whence the author had this stricture, doth not appear. For if the gothic bishop of the name of Ulphilas be here meant, who translated the bible into the language of his countrymen, it is generally understood, that we have nothing of his at this day but the broken remains of that work: perhaps there is some mistake of the name in the author's transcript. (M)

France, was turned into the french fashion ; and all England with him. W. 1. commaunded our lawes to be written in the english tounge, bicause most men understood it; and there be of his patents in the faxon idiome. Yett in all these passages nothing appears of the french lawes, or forme of parlements, to have bin brought into England in those times: nor could it be, for they were not then in France. Bicause the french tounge was much used in England, it doth not therefore follow, that the french lawes and parlements were then also brought into England: especially when their forme of parlements, their three estates so like our's, was not with them knowne untill about the year 1300. And doubtles they who are most offended att their countrie's honor, will for shame, and notorious trueth's sake, allow a much elder date to the three estates, and forme of our english parlements. Hardly any deeds of our kings are in French, before H. 2. time; the most are in E. 1. and E. 2. time, before 36 E. 3. concerning which statute, it was naturall for the English to desire it. Moses read all the lawes openly before all the people; and that which concernes the lives, liberties, and estates of all, ought to be made knowne to all, in the most perspicuous way that may be. The lawes of the Romans, of Spayne, France, Sweden, and most other countryes were published in their native idiome. The civilians contest this not to be fitt; yett it appears, that as in Rome the lawes were in Latine, so in Constantinople they were in Greeke, and the like in perticular cittyes; only poore England hath had learned men too hard for the rest in this point, to have their lawes in a forein language: yett it was not alwayes so; many faxon MS. yett extant, containe much of the politicall government, and the faxon lawes are in that tounge. R. 2. H. 4. H. 5. and H. 6. used to write their letters in the french tounge; so are some

pleadings in the common bench to our time : yett none will argue, that in those times the french language and parlements were heere introduced. Fortescue writes, that the English kept their accounts in French; yett doubtles they had accounts heere, and revenues, before the french language was in use in England. My lord chiefe justice Coke saith, that duke William taught the english men the norman termes of hawking, hunting, gaming, &c. yett none doubts, butt these recreations were in use heer before his time : so notwithstanding our publique councell be called after the French, a parlement; it doth not follow, that therefore we had the thing from France, butt that it was in use with us before it was with them.

Before the norman invasion, many of our lawes were written in Latine; as appears in our old authors', and by the antient records, rolles of mannors, and courts baron, the records att Westminster, and att the Tower, yett extant in Latine. Many of our law bookes were translated out of Latine into French, about E. 3. time. Most of our statutes from E. 1. till the middle of H. 7. time, (notwithstanding the statute 36 E. 3.) are inrolled in the French; except the statute 6 R. 2. and some other in Latine: before, and in that time, they were proclaymed by the sherifs in English. For the reports of our law cases in law French, by some so enviously and scornfully decryed, it was not the language in which they were pleaded, or inrolled; butt made use of by the reporters according to their fancy; and they have in them most of

* Glanvill. — Bracton. — Tilsbury. — Hengham. — Fleta. — Register. —
Lib. intrat. &c. * Polydore. — Aliot. — Daniel. — Hottoman. —
Cowel, &c.

the peculiar words, which could not without præjudice be changed from the Saxon; the rest was the pure French of that time, and is not difficult to be learned: the justification of it is largely, and learnedly, sett downe, by our author.

That the lawes of England were carryed from hence into Normandy is before shewed; and it is not improbable, that they were also carryed out of England, and established in many partes of France. Paulus Jovius expressely affirmer, that when the english kings reigned in a great part of France, they taught the French their lawes. By the chronicle of Eltham it is related, that our king H. 5. sent to Cane, in Normandy, not only divines, butt with them english common lawyers; and that was done by the agreement at Troys in Champeigne. If the lawes of England were carried from hence into France; it is not likely, that Fraunce should be the originall of the lawes and parlements in England. Nor will the time of their's (as hath bin before noted) answer to the argument, that they were so: for of their assembly of estates by themselves it is sayd " that, " some hundreds of years past, we have given them (that is the common people of whom he then spake) place and voice in our congregations." And afterwards he seemes not to allow them a commencement much antienter than hath bin before remembered, much antienter than about three hundred years before that time; neither is there testimony of the three estates in that kingdom before that time. Butt Polydore, and his followers, and the greatest oppugners of the right and honor of our nation, will yett afford unto our parlements a much more antient originall than the

¹ MS. Sir Rog. Owen, c. x.

² Pasquier recherches, f. 81.—Depuis quelques centaines d'ans, nous luy avons donné place, et voix en nos congregations.

time of the beginning of the three estates in Fraunce, by the judgement of their own authentique writers: and if any will be minded to give the least credit to forein and domestick authors, to the charters, records, law cases, manuscripts, and other testimonies before cited; they may be fully satisfied, notwithstanding our use of the french word parlement, or any of the objections before remembered, that the originall of the lawes, gouvernement, and parlements, is not from duke William (whom they call the conqueror,) nor from the Normans, nor from the french nation.

France. P. 101. Jovius exp. kings reigned in a great part of France, they taught the French their lawes. By the chronicle of Blisam it is related, that our king H. 1. sent to Cane, in Normandy, not only divines, but with them english common lawyers; and that was done by the agreement at Troy in Champagne. If the lawes of England were carried from hence into France, it is not likely, that France should be the originall of the lawes and parlements in England. Nor will the time of theirs (as hath bin before noted) answer to the argument, that they were so: for of their assembly of estates by themselves it is said, that "some hundreds of years past, we have given them (that is the common people of whom he then spake) place and voice in our congregations." And afterwards he seems not to allow them a continuance much antienter than hath bin before remembred much antienter than about three hundred years before that time: neither is there testimony of the three estates in that kingdome before that time. But I observe, and his followers, and the greatest opposers of the right and honor of our nation, will yett afford unto our parlements a much more antient originall than the

MS. St. Reg. Owen, c. x. —
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C H A P. XXIII

To be holden.

TH E king ordeins his parlement “to be holden^a,” that is to be assembled, to be had; according to that translation of the latine word by the Germans, “to be had,” and of the Netherlands, the same. In the like sence the latin authors themselves doe use the word, as in that of Ovid^b.

In his right hand the staffe he held,

And with his left the helme did welde.

That it is att the pleasure of the prince to hold his publique coun-
cells, hath bin shewed before: the manner of holding them is not
improper for our discourse; it was not antiently with that state and
honourable preparations as of later times.

Formerly some have bin held in the field^c; as in that great meet-
ing where it is sayd, that “both armies compelled the peeres to a
conference:” and in that councill was the duell proposed, between
Edmond Ironside and Cnute. Also that great assembly att Runny
meade, neere Stanes, where the great charter was proposed and ob-
tained^d, is termed a parlement though held sub dio; as many such
councils are, especially when the exigencyes are such as will not ad-
mit of formalities: And so the french authors relate^e, that their

^a Tenendum. — Hatten. — Heben. — Honden. ^b 1. Fast. — Ille tenens ba-
culum dextrâ, clavemq; sinistrâ.

^c Ethelredus abbas de general. reg. col. 363,
364. — Polychron. lib. vi. — Uterq; exercitus proceres ad colloquium cogunt.

^d Mat. Paris — K. John.

^e Haillan, f. 204. a. — A assembler les estats d
royaume en camp.

kings, of the first linnage, used to assemble the estates of the kingdome in the field; and the Romans^f sometimes held their senates in the open ayre.

The hebrewe elders^g, att the first institution of the sanhedrim, were assembled att the tabernacle of the congregation; and afterwards att the dore of it.

For many ages our parlements have sate in two severall houses or chambers, prepared with such decency, and state, as befitte the presence of the prince, with his nobles and gentlemen of quality of the commons with him. In the chamber called the lords' house, att the upper end, on a foot pace erected [with] steppes is placed a rich chayre of state, under a canopy; below, on each side, are great chayres for the king's sons, or brothers; on the three other sides are benches covered with red cloth, for the nobles to sitt according to their rankes; and in the middle of the roome are wool sackes, covered also with red cloth, where the judges and officers are placed; and this is supposed to have bin used, to putt the lords in mind of the great trade, and interest of the kingdome, in the woollen manufactures and clothing: all this is above the barre; and below it is a specious place where the commons use to stand, when they come up to the lords house, and when suitors are permitted to come in.

The commons have another chamber, where they sitt and debate by themselves, not undecently prepared att this time.

In Germany, and Sweden, the roome where all the states meete is very magnificently furnished; and perticular cittyes, as Hambourgh

^f Rosinus de antiquit. Rom. c. vi. p. 280. Sub dio.

^g Num. xi. 16.

and others, have their roomes of councell very nobly furnished, and full of state. The ricksdagh fitts in a spacious roome, stately and fittingly prepared; att the upper end therof, uppon a foot pace under a rich canopy, is the chayre of state, all of filver, with rich cushions in it; on each side therof are seats for the senators, five of the seats being chayres for the five ricks officers together, on the left side of the state; the rest for the senators are stooles of velvet; below them are sett, on each side of the roome, formes one behind another covered with red cloth; a space is left in the middest of the roome to passe, and on each side the formes are placed; on the uppermost [part], next to the state and on the right hand of it, the nobility doe sitt, that is the earles, barons, and gentlemen (such as are created gentlemen by letters patents under the great seal, and none other are taken for gentlemen; these have vote in their ricksdagh, and are in the nature of our lesser barons heertofore) on the formes, over against the nobility, are placed the bishops, superintendents and deputies of the clergy; behind the nobility doe sitt the deputies of the boores, themselves being no other butt boores; and behind the clergy doe sitt the deputies of the cittyes, and towns; and all doe sitt, and are covered, if the king be not present.

The manner of holding the assembly of estates in France¹, the throne and state of the king, the places of the daulphin, of the nobility, clergy, officers, and deputies of the provinces, was full of pompe and grandeur. So is the holding of the senate in Venice, in a roome highly extolled by travailers, for the magnificence of structure, and beautifull adorning of it; nor is the throne, and state of their duke, inferiour to those of great kings.

¹ Thuanus, lib. xx. f. 557.

The word * throne comes from the greek worde which signifies a feate, and so it is rendred in the Latine “ a feate where kings only sitt;” the French doe calle it “ the royall seate;” the Italians say “ the chayre;” the Spaniards terme it, “ the proper seate of the kings;” and the Germans to the same purpose. All agree it to be the seat royall of the king, where he sitts att solemne times, as in his publique councells and the like. As it is recorded of king Herod¹, that, uppon a fett day, he did sitt uppon his throne. It is usually erected on high, and conspicuous, so that the prince may behold all, and be seen of all that are about him. Such a throne, and of great glory, was that of Solomon, of whom it is said; ^m that the king made a great throne of ivory, and overlaid it with pure gould, and there were fixe steppes to the throne, with a footstoole of gould.” Those fixe steppes ⁿ the rabbins make to be for an admonition of justice; when the king ascended them, it was thus said unto him; att the

1. Do not pervert judgement.—

2. Be no respecter of persons.—

3. Take no reward or bribe.—

4. Plant no grove.—

5. Erect no image.—

6. Slay not the ox.

* Θρόνος.—Solum, quod soli in eo reges federent.—Siege royall.—Cadrega.—La silla propia de los reys.—Ein konigli cherstul.

¹ Acts xii. 21.

^m 2 Chron. ix. 17, 18.

ⁿ Schiccardus.—Jus reg. hebraeor. c. iv. p. 98.

And

And they write^p, that their kings did sitt in the pallace, uppon the throne: and it appears, that the king of Israel, and the king of Judah, sate either of them uppon his throne, when the prophets prophcyed before them. The instances of thrones in the scripture are too numerous to be inserted: the like use of them was by all other soveraigne princes, both of the east and west.

It may perhappes not be unseasonable to remember that use of a throne, which the historians of that time relate to have bin made by the danish king Cnute^p, who commaunded the royall throne of his empire to be sett on the sea shore, neere the water, as the sea was flowing; and sitting therein, spake to the sea, as lord of it—“Thou art under my dominion, and part of my empire; and the land on which I sitt, is mine, and there is not any one in it, that dares resist my commaund; therefore I also commaund thee, that thou ascend not uppon my land, nor presume to wett the feet of thy soveraigne.” Butt the sea, notwithstanding this inhibition, comming up after its accustomed manner and nature, and not obeying his commaund, wett his feet and legges without any reverence. Wheruppon the king leaping hastily out of his throne, and retiring from the waves, used these words—

“Lett all the inhabitants of the world know, that the power of kings is butt vaine; and that no man is truely worthy of the name of a king, butt he alone whose commaund both heaven, and earth, and the sea obey by everlasting lawes.” One addes^q these words to

^p R. Maimon.—2 Chron. xviii. 9. ^q A^o 1034.—Radulphus de Diceto.—

Abbrev. chron. col. 468, 469.—Mat. Westm. p. 409.—Hen. Huntingdon, lib. vi. p. 364. Hist.—Polychron. lib. vii. c. 22.—Fox Acts and Monuments, vol. i. p. 211.

^q Henry de Knighton.

his speech——“ I am a wretch, and a captive, able to doe nothing, possessing nothing without his guift: I commend, I recommend my felfe to him; and lett him be the guardian of debility, amen.” After which time they report, that this king never wore his crowne; butt putt it uppon the head of the crucifix of Wincheſter.

The wiſe man confirms the ſame doctrine.——“ I was great, and increaſed above all that were before me in Jeruſalem; alſo my wiſdome remained with me, and whatſoever my eyes deſired, I withheld it not from them; I withdrew not my heart from any joy, for my heart rejoiced in all my labour: then I looked on all my workes, and on the travaile that I had laboured to doe; and behold all is vanity, and vexation of the ſpirit, and there is no profit under the funne.” And indeed what awayleth power, and thrones, and pompe, and greatnes of the world, when the end of all is, “ All goe to one place, all are of the duſt, and all ſhall returne to the duſt.”

It was good counsell, on this argument, which Tully gave to his brother, to whome he commends this medium.——

They ſeeme (oh my brother!) to be moſt happy, who in the beſt commonwealth, when flourishing in the management of affayres, can hold that courſe of life, “ that they can be in buiſnes without daunger; and with honor in retirement.”

Butt to returne to the manner of holding the great ſanhedrim of the Jewes; it is related, “ that they uſed to ſitt in a conclave or

* Eccleſiaſtes, ii. 9, 10, 11. — iii. 20. * In negotio ſine periculo, in otio cum dignitate eſſe poſſint. * Maimon. — Habach. ſanhedr. c. xiv. — Seld. de ſynedr. lib. ii. c. xv. — Schiccard. c. i. theon 2.

chamber of cutt stone, which was in the court of Israel, appointed for that use, and may be called the stone chamber.

Various names^u have bin given to it by those who interpret the place of sitting. And the exedrae among them, were such places or roomes as had seates, in which the philosophers, rhetoricians, and others who delighted in studyes, did use to sitt and dispute. One calles it the session, as we doe the sitting of our parlement; and from thence^w the names which the Jewes gave unto their councell, thus holden, are proper, bicause there the nobles did use to sitt.

This stone chamber is mentioned by the prophet^x, in the descriptions of the temple, over against the “pavement which was for the utter court,” according as the name given to it doth signify.

The holy evangelists^y in the story of our Saviour doe mention, that the soldiers ledde Jesus into the common hall, into the praetorium, the judgement hall, where it seemes the councell was holden.

The roome, where the house of commons is att this day holden, is not altogether unlike that which was called the exedrae, with benches and seates sett round; not differing much from the forme of a halfe moone, on each side of the speaker's chayre which is in the midst of the upper end of the roome. It is related by the hebrew authors^z, that the place where the great sanhedrim sate was of the

^u Lishkath, hagarith, (thirouth?) gazophylacium, pastophorium, exedrae.

^w Sessionem,—lishkath, exedrae, sanhedrim,—Vitruvius, lib. v. c. 11.

^x Ezek.

xlii. 3.—Lithostroton atrii exterioris.

^y Mat. xxvii. 27.—Mar. xv. 16.—Jo.

xviii. 28. 33. and xix. 9.

^z Maimon. in Jud. tit. sanhedr. c. i. 11. 3.—R.

Eleazer.—R. Zadock. &c. 8 sanhedr.—Ibid. supr. et Dabill.—Sol. xxxvi. 2.

figure of an halfe moone ; and the prince of the fanhedrim fate in the middle of it, the elders or wise men on each side of him : the reason of his sitting in the middle is given, that they might the better see him, and hear his voice. And to this figure (they expound) doth allude the text^a ; “ thy navell is like unto a round goblet which wanteth no liquor, thy belly is like an heape of wheate sett about with lillyes.”

The Jewes of Spayne doe render it^b, “ a round vessell, wanting no liquor :” the Syriack, and Arabicke the same. They say, that the navell is there resembled to the fanhedrim, bicause it was held att Jerusalem the middle, or navell, of the earth or world ; the lunnary figure, bicause that seate is an halfe moone ; and the cup or goblet, bicause that is delivered to the whole world ; an heape of wheate is said, bicause every one hath benefit, as by bread, so by publique counsell. Of this the chaldee paraphrase saith—“ And the prince of thy fanhedrim, (by whose mouth, and goodnes we are governed, as the childe is nourished by the navell in the mother’s belly) he is glorious in the law, like the circle of the moone ; and he is compared to lillyes, that he may have the strength to labour in the lawe day and night.”

A question hath bin raised, amongst us, touching the holding of our parlements, whether anciently both houses were holden aparte, and fate in severall and distinct roomes, or houses, as now they doe : or whether all the members of parlement did originally sitt together, and were holden as one entire body, in one roome or house, as the graecian and roman senates, and the fanhedrim, and other counsell did ; as that of France, when the estates were holden,

^a Cant. vii. 2.

^b Vaso redondo no faltor templacion.

and those of Germany, Sweden, and Scotland doe, when the estates meet, att this day.

The author of the abridgement of the parlement rolles, and my lord chief justice Coke are of opinion, that the lords and commons did all of them sitt together as one body untill 6 E. 3. att which time, by desire of the commons (they say^c) they were seperated: And the chiefe justice tooke occasion, in a question in the King's Bench, to publish his opinion there, that in antient time the parlement was holden, all the members sitting together; and the seperation was by desire of the commons; butt notwithstanding this seperation (saith he) they are butt one house still; and he cites a record 30 H. 1. of their seates and degrees, as they were then holden. That the two houses were held apart, and sate in severall chambers in R. 2. time, is evident by that passage of the earle of Suffolke^d, who was chosen by the knights of the shires 5 R. 2. to pronounce on their part, the buisnes of the commonwealth; the day and hour wherein he was going to dispatch it, "when he began to go up the staires leading to the chamber where all the nobility of the kingdome did sitt," he suddainly dyed there. How this earle came to be chosen by the knights for their buisnes, I shall not inquire; butt it seemeth by this story, that the lords did then sitt in a chamber by themselves. The opinion that they were in one house till 6 E. 3. is endeavoured by Mr. Prin, (in his preface to the abridgement of the parlement rolles) to be confuted, where he saith, that 5 E. 3^e. the lords and commons sate aparte; and that then certaine lords, as a

^c Abridgement of parl. rolles, rot. 6 E. 3.—Co. 4. institut. p. 2.—P. 12 Jac. B. R. MS. rep. f. 6. b.

^d Tho. Walsingh. hist. p. 202.—Cum gradus ascendere coepisset ducentes ad cameram in qua regni nobilitas tota concesserat, &c.

^e 5 E. 3. rot. parl. n. 3.—6 E. 3. rot. parl. n. 3.—Les dits counts barons et grauntz, &c.

committee, did consule with the commons; that in the next yeare it is expreffely faid, that the bishops by themselves, the lords by themselves, and the knights by themselves advised the king, &c. and that the bishops and proctors of the clergy went by themselves to consule; and that "the earles, barons, and great men," went by themselves: therefore were of several houses.

Butt a fuller evidence that they were holden severally, is out of the before cited MS.^f who saith, that 11 E. 1. Walsingham affirmes, that a parlement was att Shrewsbury, and in the same year another parlement was att Acton Burnell: when (saith our author) by the records, all was butt one parlement; and the lower house, as he calles it, was holden att Shrewsbury, and the upper house at Acton Burnell. Polydore^g, among his many mistakes, yett agrees heerin to that which seemes orthodox, that in H. 1. time, to the end (saith he) "that every one may have an equall power of debate, they consule aparte the one from the other;" the king, prelats, princes and abbots meet in one place, and there sitt together; and the deputies of the cittizens and of the people, in another place neere unto it, where they debate among themselves of matters to be done. My father hath a note uppon the story of the banishment of divers noblemen^h, that "the cause was brought to the suffrage of the people," that is, to the vote of the house of commons then probably holden by themselves, and this in Edward the confessor's time.

Another opinion (and not the least probable) touching this matter is, that each of the estates used to consule aparte, and severally to be holden in distinct houses, from the first meeting of them; butt,

^f MS. Sir Rog. Owen, c. i. f. 71. ^g Pol. Virgil, f. 477.—Ut aequa unicuique loquendi potestas fiat, alteri ab alteris disjuncti consulunt. ^h Malmesbury, f. 204.—Causa in suffragium popularium deducta, &c.

as occasion required, did use to meet altogether in one roome ; as appears by our records to have bin the practise, and continues to this day.

Att the first meeting of every parlement, when the king comes into the house of lords, the commons are sent for thither, and the causes of holding the parlement are imparted to them all together. In like manner uppon severall other occasions, the commons use to repayre to the lords house, uppon messages, att the passing of billes, and the like ; and sometimes both houses attend the king at his owne pallace, and are holden together att the giving of the royall assent, and att the adjournement, proroguing, and dissolving of the parlement.

H. 4. sate in his royall estate in the great hall att Westminsterⁱ, there being present the lords and commons, the arch-bishop, by the king's commaund, declared the cause of holding the parlement : and the like is to be seen in the records in the beginning of most parlements, and att the adjournements, passing of billes, conferences with the king, and dissolving of them. With the Germans and Swedes, the practise att this day is, that all the estates first meet together with the emperor, and king, and after some proposalls are then made to them, each estate severally and aparte doe consult by themselves, in severall colledges (as they terme them) or places for that purpose ; and when they are come to a resolution, all the estates meet againe in one roome, and the marshall, or speaker of each estate, gives up their respective resolutions in the matters formerly proposed : and att the passing of lawes, and conclusion of every generall buisnes, the estates are held all together ; butt in consultations they are aparte.

ⁱ 1 H. 4. rot. parl. n. 1.

What was with us, in antient times, can hardly be made out in cleerness. Butt of later times for some hundreds of years, the members of parlement have ^k bin holden aparte in severall houses, the lords by themselves and the commons by themselves, and have mett all together uppon the occasions before remembred : and though they consulte apart, yett are they butt one body¹, the great corporation and body politick of the kingdome ; and that which shall have the force of a law must be passed by consent of them all, wherein the consent of all the people is involved.

* The sense seems to require that we read *consulted* or *sate*. (M)
stitut. p. 2.

¹ Co. 4 in-

C H A P. XXIV

Att our citty.

THE originall of cittyes is thus described^a: husband and wife make a family; children and nephews increafing, it is neceffary to adde other houfes; fo comes the fociety of many families, who finding the benefit therof for provifion, and fafety, erect themfelves into cittyes, and commonwealths. The philofopher^b accordingly joynes citty and civill fociety together; and every citty is contained in a certain fociety. The orator^c agrees heerwith, when he faith, that nothing is more acceptable in earth to the chiefe God, who rules all this world, than “councells, and affemblyes of men to be affociated together by lawe, which are called cittyes.” For (faith Aristotle^d) to thofe that would live well, many things are requifite, all which cannot be procured by men of one ranke or quality: and “the feverall rankes or qualities, and the many communications of offices or faculties, made for the confervation of life, are nothing elfe butt a plurality, and diftinction of the parts of a citty.” The number of men living together in a citty, being many, gives the greeke name^e to it: and according to the etimology, generally that is called a citty which is “^f the habitation of many perfons,” and is incompaſſed with a wall. Another lawe calles that a citty where the governement is with juſtice, and order of magiftracy.

^a Patric. Senens. — Hinc ortum eſt ſeminarium civitatum. ^b Ariſt. lib. i. de repub.

^c Cicer. de ſomn. Scip. — Concilia coetusque hominum jure ſociari, quae civitates appellantur.

^d Lib. i. polit. — Ordines diverſi ſeu officiorum communicationes multiplices, pro conſervatione vitae factae, nihil aliud ſunt quam pluralitas et diſtinctio partium civitatis.

^e Πολις ^f Lucius de epiſc. et cler. l. nulli. — Omnis habitatio plurimorum. — De ſpectaculis, l. nemo.

With us^e, and in other regions, a citty is said to signify such a town corporate as hath a bishop and a cathedrall church. And properly it is called a citty which hath a bishop. So that England hath as many citties as bishopricks, besides Welles and Litchfield the which are also bishops sees, and Westminster, which was also a bishop's see, as will be shewne heerafter. And so France is said to have 104 citties within the territories of it; and the reason is given by the authorⁿ because there are so many seats of arch-bishops and bishops.

This was occasioned by a canon of the councell, that bishops sees, which before that time were in more obscure places, (as the see of Salisbury att Sunning, the see of Lincolne att Dorchester, and the like) that now they should be removed "to moreⁱ eminent places;" the which was done accordingly, and the places to which they were removed either then had, or thereby gained, and do retaine the name of cittyes. Some hold that antiently a citty and a burough were all one before this translation of the bishops sees; since which time and by usage amongst us, the name of citty is become the more honorable. Answearable heerunto is the german word for a citty, "the habitation^k of burgers:" and in a case of our law^l, a thing is putt to be done in a citty, as in London or in any other burough. Thus burgeses are called the inhabitants of cittyes. For (saith the author^m) with the Saxons and Germans, burough and citty are all one. Thuanusⁿ hath the word episcopall citty; and Polydore mentions the decree for translation of bishop's sees to cittyes.

^e Cowell, verbo Citie. — Lucas de Parma leg. unica tit. de metropol. Berito, tit. 21. lib. x.

^k Cassanaeus in consuet. burg. p. 15.

ⁱ Ad loca celebriora.

^k Burgerschafft.

^l 43 E. 3. f. 11, b.

^m Spelman, glossar. verbo Bur-

geses.

ⁿ Lib. xliii. 906. d.

Generally,

Generally, the parlements of England have bin holden att the great cittyes, as London, Westminster, Yorke, Winchester, Coventry, Lincolne, Salisbury; and by occasion, in our memories, att Oxford, and att other cittyes; and sometimes as occasions might require, att meaner places, as att Clovesho, att Clarendon, att Acton Burnell, and the like: butt generally att Westminster, Gloucester, or some other citty.

The sanhedrim was held in the citty of Jerusaleme; the senate of Lacedemonians, att Sparta; of Athenians, att Athens; of Romans, att Rome; of the Venetians, att Venice; of the Germans, att Vienna, Ausburgh, Ratisbone°, &c. of Bohemia, att Prague; of Poland, att Cracow; of Sweden, att Stockholme; and the like of other countryes.

• Thuanus, lib. cxiv.

Of Westminster.

TH E king calles it his citty, which is authority sufficient for that name. Cambden^a saith it some time was more than a mile distant; butt now is conjoynd so close unto the citty of London, that it seemeth a member therof: wheras it is (saith he) a citty of itselfe, having their peculiar magistrates and priviledges. Is was called in times past Thorney, of Thornes; butt now, Westminster, of the west situation, and the minster or monastery there. He makes it most renowned for that church, the hall of justice, and the king's pallace. The church is famous, especially for the inauguration and sepulture of the kings of England. Sulcard is cited by him, that there stood some time^b a temple of Apollo, which fell downe with an earthquake; out of whose remains Sebert, king of the East-Saxons, erected one to St. Peter, which the Danes overthrew, butt bishop Dunstane re-edified. Afterwards Edward the confessor, with the tenth penny of all his revenues, built it new for his own sepulture, and a monastery for benedictine monkes; endowing it with large revenues. W. 1. confirmed and added to those donations, as hath bin before in part remembred. After that, 160 years, king H. 3. pulled downe that building, and from a new foundation erected a stately church, which was fifty years in building: and king H. 7. built his chappell of admirable elegancy,^c the wonder of the world.

This church had first a deane and prebends; soon after, one bishop and no more, and he is named bishop of Westminster in the statute^d

^a Britannia, Middlesex, p. 428.

^b Temp. Antonini pii imperat.

^c Leland.

^d 35 H. 8. c. x.

of H. 8. Queen Mary putt againe into possession there the abbots and the monkes. Butt by queen Elizabeth, by act of parlement, they were removed; and the queen converted it into a collegiate church for 12 prebendaries with the deane, and an almshouse for as many old foldiers.

The great hall, and buildings neere it are a part of that stately pallace of our kings, yett remaining; the rest of it having been consumed with fire. In that great hall are the courts of justice holden, and in some of the chambers above are the houses of parlement held, in their severall and distinct places. All is called the citty of Westminster^e in severall acts of parlement. That place where the house of commons did formerly sitt is supposed by some^f, to have bin the chapter house of the abbot of Westminster; which they collect from the parlement rolles. And the place where they now sitt, in this citty of the Westminster, is an old chappell, formerly dedicated to St. Steven, and then accounted an hallowed place.

It hath bin before noted, that the meeting of the elders, att the first institution of the jewish sanhedrim, was att the tabernacle; and afterward, it is agreed by learned men, that the place where they used to sitt was before the dore of the tabernacle: and where the tabernacle was, there the sanhedrim sate, as in Silo, Mizpah, Gilgal, Nobe, Gibeon, the house of Obed Edom, and att last att Jerusalem. Presently after the building of the temple, the place of meeting in that councell was there; as it is sayd^g by Moses, “and thou shalt doe according to the sentence which they of that place, which the Lord shall chuse, shall shew thee,” which intimates (saith an expofitor) both the temple, and the place of meeting of the sanhedrim.

^e 35 El. c. vi.
n. 8.

^f Abridgment parl. rolles, preface. — 50 E. 3. rot. parl.

^g Deut. xvii. 10.

So the senate of Rome^h did usually sitt in the temple, wherof it is said, that “the place where the senate was to meet, could be no other butt that which the augures did appoint, which they called the temple.” And when the senate was to meet, or forced into other places, ¹ the colledge of augures decreed, that those places from thenceforth should be temples; to the end, the matters there deliberated should be confirmed. Some times they sate in the temple of Jupiter^k, in the capitoll, in the gate of Cappua, in the house of Bellona. So Pasquier notes^l that the druydes used to sitt in councell, “in a hallowed place,” which, some hold, was their temple.

^h Gothofredus, lib. i. c. 17. — Locus ubi conveniendum esset senatui alius esse non poterat, praeterquam qui ab auguribus definiebatur, quem ipsi templum vocabant.

ⁱ Curia Hostilia, Pompeia, Julia.

^k Rosinus de antiquitat. Rom. c. vi. p. 280.

^l Recherches, p. 7. — En lieu sacrée.

C H A P. XXVI

On the eight day.

TH E day is given for man to labour in, and is the proper time for buisnes. It was one of the means to speed counsells, given by the chancellor to the parlement^a, to be in the house early in the day. Our parlement's constant course is to begin their sitting in the morning, and to rise about noone, midday; except some extraordinary occasions, taking up long time of consultation and debate, have sometimes detained them late in the house; and hath in our remembrance come to night sittings: yett experience hath taught us, that it is more suitable, and more effectually for the good and well dispatching of great affayres, to observe convenient hours, and not to tire both judges, and counsellors, and people with too long sittings; the end wherof is, as Jethro admonished Moses (when he told him of his sitting from morning unto the evening to judge the people, ^b his father in law telles him) "the thing that thou doest is not good; thou wilt surely weare away both thou and this people." Butt a convenient portion of the day is most fitt for buisnes; as the parlement useth to sitt in the morning, untill noone.

The evangelist^c relates, that our blessed Saviour was ledde from Caiphas, unto the hall of judgement; and it was early. The time of the sitting of the sanhedrim^d is expressed to be from the time of the morning sacrifice, untill the time of the evening sacrifice. The morning sacrifice began by day-breake, and was presently offered;

^a 8 R. 2. rot. parl. n. 5.^b Exod. xviii. 13. 17, 18.^c Jo. xviii. 28.^d Gemar. Hierosolim. ad tit. sanhedr. c. i. f. 19. et Babilon. c. 10. f. 88.—Maimon. Holach. sanhedr. c. iii.

and then the sanhedrim began to sitt, and continued sitting till the evening sacrifice began, and then they departed; which hour is accounted to be about ^c two o'clocke in the afternoone, or halfe an hour before three. With this agrees, 'in that part of it, that which is said of their judgements, that they were exercised by them "a little before noone; and the reason is given of that time, bicause then the court is full of clyents, and such as follow their buisnes." The same time is used by our tribunalls att Westminster, and by our supreamest court the parlement. And heerwith agrees that passage of Josephus relating the story of Ruth, and her marryage; he saith, that the buisnes was transacted before the judges, "when it was ^e about the time of noone, or mid-day:" and generally they were to sitt in judgement in the day-time. Usually, among the Graecians, their judiciall time was about mid-day; which is testified by Hesiod ^h, and which we call "full courte." The times of meeting of the roman senate appear by their law, that if any thing were done, or any lawe made by the senate, before the sun-rising or after the sun-setting, it was of no force. And Seneca ⁱ informes us of the time of their sitting, where he saith; "our auncestors (saith he) did forbid any new motion to be made in the senate, after the tenth houre. As I have often knowne it ordered in the house of commons, that no new motion should be made after 12 a clocke, and that late and long sittings, especially in the night, have seldome proved successfull to their buisnes. Men's spirits being tyred are not so apt for temper, or judgement, as when they are fresh; nor is it so equall, or inge-

^c Lib. ii. Seld. de synedr. p. 425.

^f Menochius de repub. judaic. lib. i. c. 6.

col. 44.—Paulo ante meridiem cum jam forum litigantibus et negocia sua tractantibus plenum est.

^e ἤδη μεροήσης ἡμέρας.

^h Περὶ πλήθους ἀγορᾶν.—

Agellius, lib. xiv. c. 7.—Senatus consultum nec ante exortum, neque post occasum solem factum ratum fuisse.

ⁱ De Tranquil. vitae.—Novam relationem post

horam decimam in senatu fieri vetabant.

nious, to presse more uppon some men than others whose constitutions may possibly be stronger, and better able to hold out and continue together, than elder or more infirme men can bring themselves unto: yett some pressing occasions may require it.

If in the jewish sanhedrim^{*} a civill matter were begun in the day-time, it was lawfull to make an end of it by night; butt not to begin by night, nor to receive witnesse, or to make contracts by night. Sometimes, according to the weight of the buisnes, they continued sitting in the night time; butt never any judgement was given in a criminall cause by night; nor did they begin any great matter in the night time, butt dispatched all as neere as they could by day, the time appointed by God for buisnes: and we should not turne night into day, nor day into night.

The parlement, after they have once mett uppon the day appointed by their summons, doe then meett every day, except Sundays, and some holy dayes, or dayes of fast or of thanksgiving. The sanhedrim¹ sate two days in the weeke; butt not uppon sabbaths or festivall dayes, which they held not to be juridicall dayes.

The parlement is so constant in their dayly sitting, that every time when the house of commons riseth, the speaker pronounceth, that the house adjournes untill the next morning; and so on saturdayes the house adjournes it selfe till monday. The word adjourne is from the french word jour; “^m and to adjourne is to putt off from one day to another.”

^{*} Gemar. Hierosolim. Ubi supr. et Babilon.

¹ Gemar. Babil. et Hierosol.

—Maimon.—Mishn. &c.

^m Adjourn, unde adjornare; et adjornamentum est ad diem dicere, et diem dare.

The power of adjourning themselves is in either of the houses of parlement, and also in the king when he sees cause for it. The difference between an adjournement^a and a prorogation is, that by the prorogation in open court there is a session; and then such bills as passed in either house, or by both houses, and had no royall assent to them, must att the next assembly begin againe: (for every severall session of parlement is in law a severall parlement) butt if it be butt adjourned or continued, then is there noe session; and consequently all things continue still, in the same state they were before the adjournement. The title of divers acts of parlement is ' att the session holden by prorogation, or by adjournement and prorogation; butt never by continuance or adjournement only; and the usuall forme of pleading is, ' att the session holden by prorogation: and the passing^c of any bills with the royall assent, or giving of any judggment, doth not make a session, untill it be prorogued or dissolved.

Our author holdes an adjournement or continuance much more beneficiall for the commonwealth, and for expedition of matters, than a prorogation: and when a parlement doth meet att a day, and sitt many dayes, butt is dissolved without any act of parlement passed, or judgement given, it is no session of parlement, butt a convention^d; butt if a judgement be given, though no act of parlement be passed, it is a session.

Att the day appointed for the beginning of the parlement^e the king must be present, either in person, or by representation by his

^a 4 Instit. Co. p. 27.—Prorogo, à porro et rogo, unde prorogatio.

^c Journall book, Lords house.

^d Ad sessionem tentam, &c. per prorogationem.

^e 14 E. 3. rot. parl. n. 7, 8, 9.—3 R. 2. n. 1.—7 H. 4. n. 29.—1 H. 7. n. —

1 H. 7. f. 4. b.

^f 18 R. 2. rot. parl.

^g 3 H. 6. rot. parl. n. 1.—

24 E. 3. rot. parl. m. 18.

commissioners. Uppon this first day of the fitting of the parliament the king useth to ride in state to the lords house, in his parliament robes which are full of royalty and magnificence; he is attended by the great officers of state, and by the peeres, all on horseback in their robes (according to their severall rankes) with their servants and lacqueys in rich liveries waiting on them on foote; the king's guards in their coates, armed with the old manfull weapons of swords and halberds, and some companies of horse, pikemen, and musketiers if such are in being (and it is not unhappy when they are not). The king rides under a canopy supported by some of the nobles; and the sword, and ensignes of state carryed before him by such of the lords as he pleaseth to appoint to that honor: the peeres are also all uppon their rich foot clothes; and every one indeavours by his gallantry to expresse his devotion to his master's service. The show is full of majesty and solemnity; and the use of this pompe is to take the eyes and affections of the people, who are more pleased with such spectacles, and their minds more busyed and satisfied with them, than with more serious matters. This caused the lord treasurer Weston, in his speech to the lord major of London, to admonish the citty, not to lay downe their usuall solemnities and shoves; observing, that it was not only the lord major, and court of aldermen or common councell which governed that great city, butt the rich trappings, pageants, green men and officers att the lord major's shove; which also caused a reverence in the vulgar, and an admiration of the power and greatnes of their magistrates: and with their wise order, and administration of justice, did conduce to the yielding of a more full obedience to their orders. And this was also a policy and prudence in the state of Rome, to permit and countenance the theaters, and gladiatory shoves, with their magnificent solemnities and triumphes, wherby the mindes of the common people might be intertained, their time past away in things of delight and pleasure

to them, and they be kept from such other meetings and opportunities wherein plotts and contrivances against the commonwealth (by such whose buisy and active spirits must be doing) might be sett on foote, to indaunger publique safety.

When the states of the empire doe meet in their diette, the coming together of so many great princes is with much expence and pompe, both in their personall gallantrye, and the large traines attending on them.

In Sweden they observe their constant forme and solemnity in the meeting of their ricksdagh, which is in this manner. Some time before the day of meeting in the towne appointed for it, notice is given in the markett places, streets, and lanes, by found of drummes, and trumpetts, and an officer in his habit on horse backe proclaiming, that such a day and hour, in the great hall of the castle called the ricks saal, all the estates are to meet according to the usuall custome, to heare the propofalls, and pleasure of the king. On the day, the nobility doe first meet in a place called the riddarhus, and choose their marshall or speaker; then the clergy meete in the consistory of the cathedrall church, to whom the arch-bishop of Upsale, if present, is allwayes speaker; the cittizens meet in the citty hall, and the consull of Stockholme is their speaker or marshall; the boores meet in a place called the gillestriga, and choose one of their company for their marshall. Att the appointed hour, first the boores with their marshall before them, in a decent progresse, goe up to the castle, and take their place in the great room prepared for the meeting; then follow the deputies of cittyes and burroughs with their marshall before them, and take their due place; after them, the nobility; and last of all, the clergy; and being all fate in the great room, the king comes in attended by the senators, and his

own servants and guards: having taken his place in the chayre of state, all goe forth butt the members of the councell; and the dores being shutt, the chancellor declares to the assembly the cause of their meeting, and is answered by each marshall in his order; and so they depart to their severall colledges to consult upon the matters proposed.

On this day, being the first day of the meeting of the parlement, the members of the house of commons are called over by their returns, before the lord high steward, or his deputyes usually made for that purpose; and having answered to their names, they then take the oaths of allegiance and supremacy, and so enter into their house; then are they sent for, by the messenger or usher of the blacke rodde, and come up to the lords house; when the king being present, or commissioners authorised by him, the king, or most commonly the lord chancellor or keeper of the great seal, in presence of the lords and commons, doe shew the causes of the calling of this parlement. Butt the king may appoint any other whom he pleaseth to doe this; as many times the chief justice hath bin appointed to doe it, and some times others. Sir John Greene the king's chiefe justice (though the chancellor were present) in the presence of the king, the lords and commons, declared the causes of the parlement in English, &c. The like is in the beginning of every parlement upon the rolle, where a bishop, being chancellor, usually took a text of scripture which he repeated in Latine, and discoursed upon it: when a judge declared the causes of the parlement, or a chancellor who was no bishop, he did it in an oration summarily. The conclusion is, to require the commons in the king's name to goe together, and to make choice of a fitt person to be their speaker. Then the com-

* 22 E. 3. Thorpe.—17 E. 3. rot. parl. n. 7.

mons repayre to their house, and usually some of the members before acquainted with the king's minde, doth nominate one among them to be chosen for their speaker; wherein there is feldome contradiction. Coke saith, that after their choice the king may refuse him; and that the course is, for avoyding expence of time and contest, (as in the congé d'elire of a bishop) that the king doth name a discreet and learned man, whom the commons elect: butt without their election (saith he truly) noe speaker can be appointed for them; bicause he is their mouth, and intrusted by them, and so necessary, as the house of commons cannot fitt without him; and therefore ^asicknes is a good cause to refuse or remove a speaker, and to choose another, though it be no cause to remove another member.

^a 1 H. 4. rot. parl. n. 62, 63. — 1 H. 5. n. 9. — 15 H. 6. n. 10.

C H A P. XXVII

Of May.

IT fallies out aptly for this great councell to be summoned to meet in this moneth ; and may it prove a propitious omen of the good successe of their counfells ! The name of the moneth Maius is derived ^a à majoribus, for the elder men, “ by whose counsell the commonwealth is governed ;” as Junius, à junioribus, “ June from the younger men ” who were for the deeds of armes. When Romulus had divided the people of Rome into the elder and the younger men, the one for counsell, and the other parte for armes, to defend the commonwealth ; in honor of each part, he called the one moneth for the elders, May, and that for the younger, June. Agreeable heerunto is that of the poet ^b.

“ The name of May from elders came,
From younger men June had its name.”

Others derive the moneth of Maius à majestate ; and well may it deserve that etymology in relation to our soveraigne, being the moneth of his happy birth, and of his happy restauration ; and may it continue to be happy to him, and to his subjects, in the counsell summoned in this moneth to be assembled !

This pleasant and fruitfull moneth the Saxons ^c used to call Trimilki, bicause in this moneth they began to milke their kine three

^a Macrobius. Maius à majoribus dictus, quorum consilio respub. gerebatur.

^b Ovid. 5 Fast. — Hinc sua majores tribuere vocabula Maio,
Junius à juvenum nomine dictus adest.

^c Verstegan, f. 61.

times in a day. The Germans also called it May^d; and it is worth the noting how universally almost all the nations of Christendome concur in the appellation of this moneth of May. The French say May^e, the Greeke Μαΐς^f; the Italians say Maggio; the Spanish is Maio^g; the Polish May; the Swedish and Danish, Mai, as our English May.

The Romans^h had their “ordinary meetings of the senate, and the meetings uppon summons:” the ordinary meetings were not to be above twice a moneth; and none, butt those chosen by lott, needed to attend in the moneths of September and October.

The parlement fitts every day of the moneth, except the Lord's dayes.

The fanhedrim usually fate two dayes in each weeke; and their extraordinary meetings, as often as occasion did require.

Frequency of meeting of the publique councells of a nation, and not continuing long together att one time, is for the advantage of a nation; to consult for the safety of the whole, and repelling all daungers, and relieving any that are oppressed: and that this was desired, by the people, appears in divers lawes made for the often meeting of the parlement.

And this was very antient, as appears by a councell heldⁱ att Hertford under Theodore arch-bishop of Canterbury, king, bishops, and

^d Der monat Mey. ^e Le mois de May. ^f Μαΐος. ^g El mes de Maio.

^h Rosinus supr.—Senatum legitimum et alium indictum.

ⁱ An^o 673.—Beda, lib. iv. c. 5.—Act. pontific. Cant. col. 1639.—Parker antiquit. p. 15.

nobles being present, in a parliamentary councell. The 7 canon is, ⁱ that a synod should be assembled twice a yeare; or att least they agreed in common, that in the kalends of August, att Cloveshoe, a synod should be held once a yeare; and in pursuance therof, a councell was held att the same place under king Beorulfe; and in his four years of his reign ^k four of these councells were holden. The like ^l was ordeined by the lawes of king Alfred, that a *þitena gemote* should be holden twice a yeare in time of peace, or oftener if need should be.

King Edgar ^m ordeined, that the great assembly, out of every province, should be holden twice a yeare: and whether this was a nationall or a provinciall councell, it was the most eminent and chiefe councell of those parts.

The severall parlements, in the time of W. 1. and his successors untill H. 3. are not accounted particularly and cleerly by our historians, and the records of those times are wanting: there is yett sufficient testimony of story, that then our parlements were holden very often; and in the times also of H. 3. and of his son E. 1. who is said ⁿ to have held his parlement once in every two years, and many years oftener. Among the ordinances of E. 2. it is provided, that a parlement shall be holden once a yeare, or more often if need be.

ⁱ Spelman. concil. p. 152, 153.

^k Act. pontif. Cant. col. supr.

^l Spelman concil. 334.—Gervas. Dorobernens.—Mirroir of justice, c. i. §. 3.

^m Leg. Edgari c. v. Celeberrimus ex omni satrapia bis quot annis conventus agatur.

ⁿ 4 Instit. Co. p.—5 E. 2. Ordinat.

In E. 3. time it is enacted, ° that a parlement shall be yearly ; and for maintenance of the articles and statutes therein recited, and for redresse of divers mischiefs which dayly happen, a parlement shall be holden every yeare. After that, the commons petitioned the king, that a parlement may be holden every year : the king's answear is, to the parlement, “ there are statutes made therefore.” Againe in R. 2. time^p the commons petition, that a parlement may be yearly holden, to redresse delays, and to end such causes as the judges doubt of : to which the king's answear is, “ it shall be as it hath bin used.” In the next year^q, one of the causes of summoning the parlement is declared to be, “ for that it was enacted, that a parlement should be yearly holden.” The printed booke of our acts of parlement shewes the frequency of them, pursuant to the former lawes in the times of H. 4. H. 5. H. 6. E. 4. and the rest of our princes : and in king Charles the first's time^r an act was made, intituled, “ an act for the preventing of inconveniences happening by the long intermission of parlements ;” reciting the old lawes, and that parlements ought, by the lawe, to be holden att the least once every year for the redresse of grievances ; and enacts, that parlements shall be called once in three years att the least, or oftener if the publique affayres shall so require ; and in the act are appointed sett dayes (in the moneths of September, and in November, and January) for the times of meeting of the parlements, or for electing members of it, in case no writ of summons be issued according to the act for the same.

• Stat. 4 E. 3. c. xiv.—Stat. 36 E. 3. c. x.—50 E. 3. rot. parl. n. 177.

^p 1 R. 2. rot. parl. n. 95.

^q 2 R. 2. rot. parl. n. 3.

^r 16 Car. c. i.

In Germany^a their publique councells antiently used to be held every year, and were to continue one moneth att least; and sometimes with us (as in the act for the trienniall parlement) they are to sitt att the least fifty dayes, without being proroged or dissolved. The emperor Constantine^b appointed yearly councells to be held att Arles. Pepin appointed the like: and so did the emperor Charles the Greate, and further ordeyned to this effect; " Lett no man delay to come to the mallow (so they used to call their diettes) the one about the time of autumn, the other about the time of summer." Among the Arragonians it is sayd, " that their publique councells antiently were held once a yeare; and afterwards they were held from two years to two years:" and their stories shew the frequent calling of them.

The like course was also held among the French; and as antient as the time of the Gaules, wherof Pasquier writes^c, that the Druydes did yearly assemble, holding publique councells, and doing right and justice universally to the Gaules. In another place the same author saith of his countrey men, that their antient majors of the palace " did first introduce a forme of a yearly parlement," and sometimes held those assemblies twice a yeare. In concurrence with this opinion it is testified by some other of their authenticke authors,^d that the assemblies of the estates in France were wont antiently to

^a Lib. de rat. stat. imper. Germ. p. 344. Comitia quot annis celebrari olim solita.

^b Goldast. tom. iii. constit. imper. p. 1. an^o 411.—Reg. lib. ii. Chron.—Hincmar. Rhemenf. ep. iii. c. 29. Ad mallow venire nemo tardet, unum circa aestatem, alterum circa autumnum.

^c Respub. Hisp. f. 122. Comitia haec dudum quotannis semel celebrata, mox de biennio in biennium.

^d Pasquier Recherches, p. 7. S'assemblent annuellement faisans droict universellement aux Gaulois.—F. 43. Introduisirent premierement une forme de parlement annuel.

^e Honorius de regno Gallicae, f. 539. et Code Henry, lib. xx. tit. 2.

be held every yeare; and heerwith is a concurrent opinion of severall other writers whom I pretermit.

The same frequency of publique councells is to be found in the stories of the northerne countryes, where scarce a yeare passeth without holding them.

From this first day of the parlement's meeting, all acts made in that session are reckoned to beare date, and the whole session accounted, in lawe, butt as one day: and from this day the acts of that session doe looke forward, and ought not to looke backward; for a retrospect in a law can hardly be without injustice, we find few of them among our statutes; one in H. 8. time inflicted the punishment of being boyled to death, for putting poyson into a pott of pottage.

Butt it was rightly noted by the excellent earle of Strafford, in his last reply att his solemne tryall: " Doe we not live by lawes, and must we be punished by lawes before they be made? farre better were it to live by no lawes at all (butt to be governed by those characters of discretion, and virtue, that nature hath stamped in us) than to putt this necessity of divination uppon a man, and to accuse him of the breach of law, before it be a lawe att all." If a waterman split his boat by grating on an anchor, and the same have a buy appending to it, he is to charge his own inobservance; butt if it hath none, the owner of the anchor is to pay the losse.

C H A P. XXVIII

Next insuing.

THE “next insuing,” of a parlement, hath bin sometimes desired, by the people, not to be too soone to meet againe; as in that parlement where Walsingham^a mentions a fifteenth to be graunted by the laity, “uppon condition, that, from the kalends of March untill the feast of St. Michael in the next yeare, there should not be another parlement:” possibly uppon too much trouble, and charge of being too often called out of their cuntryes; or some perticular fears, or reasons of discouragement, to be actors in those troublesome times of R. 2; or doubting to be soone called uppon, to give the king more money, this condition might be there added: Yett generally, and in good times, the desire of the people hath bin to meet often in parlement; and the practise accordingly, as hath bin before showed. Uppon the like reasons probably of troublesome times, it might be, that the estates of Sweden complained of king Erick, (eldest son of king Gustavus the first) among other things, for assembling the ricksdagh too often; to the great hinderance of those who were summoned, and of the cuntryes: yett with them, as in other kingdomes, it is related, that they used to have their publique councells once in three years; “^b and when necessity urged, they used to be yearly called.”

Doubtles necessity is the great motive, and commaunder of those meetings; and the prince is (in that case) the judge of the necessity, and when is the time requisite for the “next insuing.”

^a Tho. Walsingham, Ypodigmae Neustriae, f. 533. 40. an^o 1380. Conditione adjecta quod a kalend. Martii usque ad festum Stⁱ Michael. anno revoluto aliud parliamentum non fieret.

^b Fuißor, Secretar. suecicus, MS. Quando necessitas urget, singulis annis, comitia universalia peraguntur.

Accordingly

Accordingly is that author cited by Coke^c, that the king calles his parlement when he thinkes fitt, and “as often as it is needfull to consulte about the great and weighty affayres, that the commonwealth may receive no prejudice.” And Polydore himselfe agrees heerin^d, that “as often as the occasions did require” (and therof he only was, and none else could be the judge) “the king att his owne pleasure summoned” his parlement; he was the only director of the time of the next ensuing parlement. My lord Ellesmere^e confirmes the same, in the argument he made in the famous case of the postnati, that the kings of England used to call their nobles, clergy, and commons together, when they, (that is, when the kings who were the only judges therof) saw great and urgent causes for the doing therof. And this may well be admitted, the parlement itselfe having declared, that the appointment of the time, and place for the holding of parlements, hath alwayes belonged as it ought, to his majesty and his royall progenitors^f. Thus (as is showed in another place) Moses, and Joshua, Samuel, the judges and kings of Israel and Judah, summoned their generall publique counsells when they judged it fitt. Thus among the Graecians and Romans, the extraordinary meetings of their senates were att such times as the prince, or magistrates thought good. So in Germany, Sweden, etc. their publique counsells are called by the prince, ^gatt such times as he judgeth it expedient. If the exigencies of the state (in the prince’s judgment) did att any time require it, the estates of the empire, for that cause, were extraordinarily to be called. The three

^c Epist. 9 rep. Quoties de rebus arduis, ne quid detrimenti respublica capiat, consultandum.

^d F. 477. Quoties res postulat suo arbitratu convocat.

^e Cas. postnati, Ellesmere’s argument, f. 110.

^f Stat. 16 Car. 1. c. i.

^g Pax public. de an^o 1495. tit. Von der uver fahree des Friedens enthallung. Ordines imperii eâ de causâ, extra ordinem convocandi fuer.

states^b in France were to be assembled att such time, and place, as pleased the king to ordeine.

Notwithstanding such a day, next insuing, appointed by the king for the first meeting of the parlement; yett if the king see cause, he may prorogue their first meeting untill another day: and that by writ patent, under the whole great seale, reciting the writ of summons; and this writ to beare teste before the retorne of the writ of summons, and signed above with the king's sign manuell, and directed to the lords, and to the knights, cittizens and burgessees called and chosen to this parlement, for certaine considerations, etc. to prorogue the parlement to a certaine day. And att the retorne of the summons, this writ being read in the lords house before some of them, and some of the commons there assembled, and prorogation made accordingly, the parlement is prorogued. Thus it was done 1 Eliz.¹ the retorne of the summons was 9th Octob. and it was prorogued to 25th of Febr. following, on which day the parlement mett, and was adjudged then to begin, and not 9th Octob. The like was done 5 Eliz.

^a Code Henry, lib. xx. tit. 20. Ley. 2^a En tel temps et lieu qu'il nous plaira ordonner. ¹ 3 El. Dyer, 203. a.

And there to have conference.

THE king resolves “to have conference” with his parlement; and some matters are proper for such a conference only: they may be of so universall and high a consequence, that they are not proper for any other conference butt between the king and his parlement; as Caesar notes, in his recitall of the customes of Brittain, that none ought to speak about the affayres of the commonwealth, butt by the counsell^a. And it is testified by our auntient author^b, in his mirroir of justice, that the king and his companions (as he properly enough stiles the comites) used to meet together att London, to conferre about the gouvernement of the people of God. And although his language be old (and as some call it) law french, yett his matter is good; that affayres of gouvernement ought to be conferred on in parlement only, and not be the subject of conferences and debates att large; least it come to that whereof Tacitus speakes^c, “that there were in place who rather would interpret, than obey the commands of governors:” and my lord of St Albane’s faith, “that disputing, excusing, cavilling uppon mandates and directions is a kind of shaking off the yoake, and assay of disobedience; and seditious tumults, and seditious conferences and fames, differ no more butt as brother and sister.”

The word^d used in the writ for “conference”, is well expressed, in the spanish, “to have speech one with another”; and the Italian

^a Jani Anglor. Seld. f. 25.—De republica nisi per concilium loqui non conceditur.

^b Horne mirroir, c. i. § 3.—Pour parlementer sur le guidement del peuple de Dieu.

^c Erant in officio, sed tamen qui mallent mandata imperantium interpretari quam exequi.—Essay of seditions and tumults.

^d Colloquium.—Habla uno con otro parlar.—Ragionare.—Parlamento, parole havute insieme.—Parlementer ensemble.

calles this conference, "a reasoning of the matter, a speaking of their mindes;" and the French use the same expreffion "to speake their mindes together."

When there falles out to be any difference of opinion between the two houfes of parlement, uppon the paffing of a law or any other matter, the courfe for reconciling therof, and for fatisfaction of one another, is for one houfe to demaund of the other a conference, by committees of the feverall houfes; fometimes by a committee of both houfes; and as the occafion may be, to defire a free conference, where every member hath the liberty to alleadge his reasons for maintenance of the opinion of that houfe whereof he is a member: and by fuch conference, to endeavour to perfwade a concurrence in thofe that differ. And in fome cafes, when the king is not fatisfyed with that which is propofed to him, they use to appoint a committee of both, or either of the houfes, to attend his majesty, and to informe him of the matter in confideration, and the reasons of their defires; to * whom the king is pleafed to vouchsafe a conference with himfelfe, according to the tenor and purpofe of the writ of fummons.

Thus it is in the diettes of the empire; if the ftates differ in opinion, that is, one ftate differ from another (who give their fuffrages by colledges, and not by fingle votes) the matter remaines undetermined; unleffe by conferences they cann fatisfy and perfwade one another, and fo reconcile the difference of opinion between themfelves; or by conference of fome, deputed by the ftates ^f, with the emperor himfelfe, to fatisfy any doubt which fhall remaine with him: and if all agree, it paffeth into an act of the diette.

* The fenfe feems to require the particle *to* (M) ^f Millerus, p. 136, 137, 138.

The like course is held in Sweden, where, in the ricksdagh, if there be difference of opinion in any one of the estates from the other, nothing can be concluded in that matter, unlesse they come to be all of one judgement; to perswade which, severall committees of the severall colledges are appointed to have conferences with each other, when they endeavour, by the best reason and arguments they can alleadge, to perswade those who differ from them to con-
 curre in their opinion. When the difference of opinion is, in any of the estates, from the king's judgement; sometimes by himselfe in person, sometimes by his senators, conferences are had with the dissenters, and satisfaction given: nor can it be otherwise in any councell. And it were to be wished, that in all such conferences, the soveraigne commaunder reason might sway, and be submitted to in all humane councells, and affayres.

C H A P. XXX

And treaty.

THIS, and the former word “conferences,” seeme to have some neernes of signification; to confer about a matter, and to treat about it, may be taken as much att one: onely some have noted this difference, that “to have conference” is only to debate and reason the matter, to discourse and deliberate of it together; butt “to have a treaty” is not only the arguing and reasoning of the buisnes, butt the determination of it likewise; as a treaty of alliance, or a treaty of peace signifies both the conference and debate about it, and also the peace or alliance itselſe made. The peace of Munster, of Ausbough, etc. is the peace att those places debated, and concluded. So when the king ordeins a parlement, and there “to have conference and treaty” with the members of it, he intends both a reasoning, and consulting with them; and further, a determination, and resolution to be had with them, uppon the matters treated on. In these conferences, and treatyes with the king in parlement, is, according to the word of the antient priviledge of parlements, allowed a freedome of debate, and liberty to speake their mindes and judgements uppon the matters treated on: otherwise the same can never come to a full discuffion, nor to a ripe determination of it. If all objections be not freely made, and answers as freely returned; and every circumstance considered, and duely weighed (which is the proper way of a treaty, and may be truely called the handling or treating uppon a matter) the resolution cannot be so cleer, and judicious, as where a full liberty of treating is permitted. Yett this liberty of treating, with a prince, must be used with all modesty, and fitting regard and distance to the majesty
of

of a prince; and with submission to his judgement; and without any words of scorne, or provocation to his fellow members; according to the record of H. 4. ^a they must "treate discretely, and as befeemeth them in publique councell."

^a 8 H. 4. rot. parl. n. 15.

C H A P. XXXI

With the great men^a.

THE latin word in the writ, heere used, "magnates," signifies men of chiefe place, rulers, governors, officers, nobles, such as are members of the parlement^b, princes and heads of the citty: whence the chiefe magistracy is called magnetarchen; and they termed magnates, "whose power and authority is great."

We find the word magnates often used by our historians, when they expresse the assembly of our publique councells; as in the councell at Hertford^c, under Theodore archbishop of Canterbury, it is said, there were present the bishops of England, and the kings, and "all the great men." The councell given to Octavius, the british king^d, was by the magnates of Brittain. So Vortigerne^e asked counsell of his magnates. Uther, the british king^f, used to call councells of his magnates; and they made his son, Arthur, king. The like is expressed^g of king Egbert. In a parlement assembled by king Canutus^h, these words "proceres and optimates" are used; and they said to be "called, by the king, to his parlement." So king Eldred summoned all the magnates of his kingdomeⁱ to councell: and a number more of the like use of this word, in the british and saxon times, might be remembred. The word is no lesse fre-

^a Cum magnatibus. ^b Livy, lib. v. bel. Maced.—Quorum magna est potentia et autoritas.

^c An^o 673. Bede eccles. hist. lib. iv. c. 5.—Magnatibus universis.

^d An^o 379. Math. Westm.

^e An^o 376. Malmesb. lib. i. c. 1. There must be some mistake in the date here assigned, as Vortigerne did not come to the Throne 'till the year 446. (M)

^f Walsingh. hist. Angl. p. 50.

^g Spelm. conc. p. 340.

^h Leidger booke abb. St. Edm. Bury.—Cunctos regni sui praelatos, procereſque, ac magnates ad suum convocans parliamentum.

ⁱ An^o 948. Ingulphus.

quent with the historians of the Norman times^k; as where it is said, that "king John, and all the magnates of England, had conference together att Oxford." Butt I should impertinently, perhappes, be thought to spend more time, in this note, uppon the worde. The hebrew word which we translate "the princes" shall come out of Ægipt, the latine renders "magnates;" and the hebrew word is expounded "great lords," and used in that sence by the Jewes att this day, when they speake of the cardinalls, or other persons in greatest place and power. The Romans used the word "magnates" among the many appellations of their great officers and governors. We find the word likewise used, in the same sence, in the lawes of Hungary^l.

Divers other appellations of great officers, and such as are admitted to publique councells, are mett with in our stories and records; the most antient is that of Brute^m, who is said to call together for counsell "the first borne," or fathers of the families, the elders of his people; and when he went to consult the goddesse Diana, he tooke with him "twelve of the first borne," or elders of his people. So the councell of Arviragus is said to be the eldersⁿ; and king Ina is said to make his lawes "by consent of all my aldermen, and eldest wise men of my people:" there are exprest elders, and aldermen; and the latine renders it the same, "of all my senators, and first borne, wisest of my people^o."

^k 5 Jo. rot. parl. m. 10. n. 3.—Mat. Paris, an^o 1204. Convenerunt ad colloquium ex et magnates Angliae.—Psal. lxviii. 32. חֲשִׁמֹנִים

p^t 1. tit. 2. and p^t 2. tit. 4.

^l Stephen Werbeucz,

jores natu.

^m Galfr. Mon. p. 31.

ⁿ Galfr. Monm. majores natu.—Duodecem ma-

^o Prin. vind. p^t 2. p. 16. Wīð eallum minum ealþorþmannum, 7 ðam ýlþerþan þīzan minne þeode.—Bed. lib. In. p. 1. Omnium senatorum meorum et natu majorum sapientum populi mei.

This appellation of great men, by the name of aldermen, was much used, and of great honor in the time of our Saxon ancestors; with whom an eminent great governor, judge, nobleman and officer, was called an alderman^p: as Hoveden, speaking of the earles and consulls of provinces, saith, that “with the English antiently they were called aldermen,” that is, eldersmen^q. From hence dukes, earles, reguli, princes and head officers of provinces, citties, and townes, were by our auncestors stiled aldermen: as the hundred earle, who was a centurion or governour of a hundred; so the alderman of the south Saxons; and the elder or alderman of the burough, and of the metropolis, as the elder or governour of Constantinople; and in the Saxon story, St. George of Cappadocia is by Afric called “alderman of the shire of Cappadocia.” So Allwines, under king Edgar, was called alderman of England^r, as holding the place of prince through all the kingdome. And it is sayd, that in the year 640. Erconbert king of Kent destroyed the idols; and commaunded a fast of lent to be observed, “by the authority of his eldership”^s as the Saxons reade it: and in the saxon gospels^t there is very constant use of the words elders, and alderman, and elderships; and when they expresse a great man, or chiefe men, they expresse it by the word aldermen. So the scribes and chiefe priests, and elders of the people are rendred; and the words elders and princes are taken for synonima; and for chiefe priests and elders they have the same

^p Ealderman. ^q Annal. p^t 2. p. 607. Apud Anglos antiquitus vocabantur aldermanni.—Bede, Florent. Wigorn. Huntingdon, etc. ^r Hundreð ealder.—

Supreaxna ealderman.—ealder burh.—Egæca ealderburh.—ealderman on ðær geýne Cappadocia. MS. de vita sanct. tit. ^s Hist. Rameciens.—Cambd. Brit. p. 308.

^t Mid þis ealder lic neýne. Bede hist. Angl. c. viii. principali autoritate.

^u Ylðnan, ylðnum, ealðnum, ealðnummannum. Mat. xxvi. 21. and xxvii. 1. 3.—Mar. x. 33. ylðnum, 7 bocnum, 7 ealðnummannum, ðæra 7acerða 7 ðæra 7acerða ealðnar 7 ðær folces ealðnar ðæra 7acerða ealðnar, 7 þa þlaforðar.

word : and of that word “ hlafordas ” there will be occasion to speake elsewhere. In the holy gospell the same word is used in the Saxon for high priest, and chiefe priest; and for the word elders they say aldermen, and elders. And sometimes aldermen for chiefe priests, and for captains; as when Jesus said “ unto the chiefe priest, and captaines of the temple, and the elders,” it is so there rendred. The word *prum* is used for wise men, and for the captaines or magistrates, and *ealdrum* for elders. So for elders of the people, the folke’s elders; and aldermen priests, for the chiefe priests. And in the holy scriptures, we have likewise the word elders used to expresse the high priests, or chiefe priests, called the elder priests*.

After the Saxons time the word alderman, denoting an earle or governor of a province, was changed (as some suppose by the Danes) into the word earle, the same with elder : and yett the word alderman still remaines in the same signification, in the chiefe offices and dignities; as in some places the head officer is called the alderman, and the chiefe burgeses, cittizens; and magistrates of the first ranke are to this day knowne by the name of alderman, as of London, Yorke, etc. not unknowne to any. In the Norman dialect they used to say of the king, “ our Lord,” or more properly, our “ elder the king;” and of the great men, praelates, peeres, nobles, they say, the lords or “ elders ” spirituall and temporall’. In our feudall lawes, the lord is called seigneur, that is elder, though he be not a peere. And it is no light argument, out of the antient use amongst us, that the word elder denotes a name of dignity from the originall of it; and

* Mat. viii. 31. xi. 27. xiv. 33. *heah racendum 7 ealdrummannum ealdrum*.—Luke xix. 22. and xxii. 52. *to sam ealdrummannum and to sam prum 7 ðær temple ealdrum*, etc.—Luke xxii. 66. *folc 7 dron, racenda ealdrmen*.—2 Ki. xix. 2. Is. xxxvii. 2. Jer. xix. 1. *קני הכהנים* 7 Nostre seigneur le roy.—Les seigneurs spirituelx et temporeulx.

was taken the same with presbiteri, because seniores or senatores, by dignity in latin so called, were with us stiled aldermen, which is nothing else but elders, or eldermen, as in the first age the word did signifye. And there is no word or appellation, in the customes and stories of the Hebrewes and of all other nations, which had so generall a concurrence and signification, for great men and nobles, as the word elders had: in the description of their great men in office, power, interest and councill, they had a resemblance to the name elders; and that which was signified by the words presbiters, princes, dukes, nobles, commaunders, captains, governors, judges, primates, great men, chiefe men, earles and many other appellations of the like sence, is also signified by the worde elders^z.

In the holy scriptures, both of the old and new testament, it is often mett with in the same sence; and the Hebreweword, for it, both the Latin and English doe render a presbiter, and elder^a. It was a title of great dignity with the Hebrewes, and taken for a judge or governour. This title is given to Eleazer, the steward or governor of Abraham's house: "And Abraham said unto his eldest servant of his house, that ruled over all that he had," etc^b. which both the Latin and Greeke do render in this sence; as we doe, in English, the eldest servant. In the same sence it is said, "Goe and gather the elders of Israel; and thou shalt come, thou and the elders of Israel, unto the king of Aegypt. And Moses and Aaron, went and gathered together all the elders of the children of Israel, and the elders, att the banquet of Jethro:" and the like in divers other places^c. And the name presbiter, or elder, was a name of dignity,

^z Presbiteri, principes, duces, nobiles, satrapae, capitanei, gubernatores, iudices, primates, magnates, optimates, comites, consules, reguli, etc. ^a זקן — Presbiter senior.

^b Gen. xxiv. 2. אל עבדו זקן — Ad servum presbiterum seu seniore

Τῷ παιδὶ αὐτοῦ τῷ πρεσβυτέρῳ.

and xvii. 6. and xviii. 12.

^c Exod. iii. 16, 18. — Ex. iv. 29. and xii. 21.

and signifying great men long before the birth of Moses, both among the Hebrewes, and Aegyptians; as when "Joseph went up to bury his father; and with him went up all the servants of Pharaoh, the elders of his house, and all the elders of Aegypt^d."

To the title and dignity of presbiter, or elder, doth resemble that of the patricii and senators in Rome, the archontes in Graece, the nobility in England and other nations. And the same interpretation of the hebrew word is given, which is in our writ; they are called "the chiefe men, or great men of the children of Israel;" and so (saith Bertram) all the hebrew interpreters doe expound it^e.

These very words doe occurre in most of our english parlements, both antient and later, especially given to the peeres in parlement; as that of optimates in the parlement of king Ethelbert, who saith, "by the counsell of my optimates, or chiefe men." The like in the confirmation of charters; and they are stiled "the chiefe of our magistrates:" and we find the wordes primates, and optimates, under king Ethelbald, Offa and many other of our saxon kings, expressing judges, great officers, governors, and members of their publique counsell^f. The like is in our historians touching the word magnates, as hath bin before remembred; and requires not more perticular instances. It hath bin the word constantly used in our writs of summons to this day, as in our present writ. We find likewise in the praeambles to some of our acts of parlement, "by the counsell of our praelates, earles, barons and other great men^g."

^d יְשׁוּעָה Gen. l. 7. ^e Ἀρχοντες.—Bertram de rep. Judaic. c. v. p. 55.—Optimates seu magnates filiorum Israel. ^f Anno 605.—Optimum meorum consilio.—Thorne col. 1760.—Spelman. conc. etc.—Evident. eccles. Cant. col. 2207.—Thorne, c. iii. §. 7. col. 1771. Nostri magistratus optimates.—An^o 822, 851, 854, 868, 924, 928, 932, 940, 948, 970, 975, 1007, 1032, 1449, etc. ^g Consilio praelatorum, comitum, baronum, et aliorum magnatum regni nostri.

Wheruppon some have apprehended, that by the word magnates, comming after earles and barons, is signified the knights of shires, and other members of parlement which are not peeres; butt of this there may be occasion to speake afterwards. That the word elder amongst others, as well as Jewes and Christians, was the most antient, generall and largest title to designe eminent persons, great rulers, governors and counsellors, is testified by divers authors^h.

The word "antient" we have from the Italian and French, and all from elderⁱ; so pope, abbot, father, are all names of dignity, and derived from that sence of elder^k. The title of pater patriae, was antiently the most honorable among the Romans; but that of papa, since the groweth of their hierarchy, became the title of highest ranke and dignity, and invested with the attribute of holynes.

Elder or senior, or the other words before mentioned, doe not in the originall of the language, butt by a received use and custome of expreffion, signify dominus, or lord; and so are given to princes, and to those in greater dignities: as sir, to a king, prince, or lord; and in lesser dignities, as in speech to a knight, esquire, doctor, marchant, and to all schollars and gentlemen; sir T. N. to a knight, in directions and writings; sir N. to a batchelor of arts; and all of them derived from senior or elder.

We find the word elders frequently used for the bodyes, or assemblies of elders, or presbiters; as in the texts formerly cited^l: the greeke worde a senate, from the word which signifies old men, or elders; as the hebrew word also denoteth. And the greeke word for

^h Sigonius, Menochius, Bertramus, Seld. de synedr. lib. i. c. 14, etc.

tianus, antiano, ancienne.

^k Papa, abbas, pater.

^l Exod. iii. 16. and

iv. 29. and xii. 21.—Lev. ix. 7.—Nu. xxii. 4.—Γερουσία γέροντες.—דְּבָרֵי—Γερουσίας.

“ a senate,” answereth thereunto; taking old men, elders, and senate for synonima. As where it is sayd unto the children of Israel, “ thou shalt speake,” etc. the greeke renders it, to the old men, or senate, or elders, the assembly of presbiters or elders of Israel. And it seemes the rather to be so by the text, where Moses called Aaron and his sons, “ and the elders of Israel ^m,” and where the wise man speaks of the good wife, “ that her husband is known in the gates, when he sitteth among the elders of the land, ⁿ” this is in the same sence as before; and in these, and fundry other texts, the words presbiters, elders, old men and senators are all taken for synonymas, and meane the same thing. The english saxon translation in this place, for elders, hath aldermen, and eldermen ^o; and that of Wickliffe is the same; and some reade it antients. And that this word elders and presbiters, in the notion of it, is taken to signify the state or order of the elders, the company, assembly, congregation or colledge, appears by severall texts ^p: as where “ the elders of the people led Jesus to their councell;” and where Paul saith, “ The high priest doth beare me wittnes, and all the estate of the elders;” in which two places of the New Testament, the greeke words signifying elders, and eldership and senate, are taken for the estate, order, or assembly of elders, according to the manner of the Jewes, deduced from the highest antiquity unto that present age. Luther in the former place hath, “ the eldest folkes,” and in the latter place, “ the house of the elders.” The Netherlanders reade it, “ the whole councell of the elders or presbiters ^q.” The English say, “ the elders of the people,” and “ the estate of the elders.”

^m Lev. ix. 3.—Γερουσία Ἰσραὴλ.—Lev. ix. 1.

ⁿ Pro. xxi. 23.

^o ealþorþmannum, ealþnar, elþnen.

^p Lu. xxii. 66.—Τό πρεσβυτέριον Συνέδριον.

—Acts xxii. 5.—Καὶ πᾶν τὸ πρεσβυτέριον.

^q Die eltesten des volkes.—Der

grantze hauffe der eltesten.—Ouderlingen et den geheeten raedt der ouderlingen.

The Rhemish have it, "the antients, and all the antients." The French reade, "the antients of the people, and the assembly of the antients'." All the versions show the use of the word "elders" for great men, and members of publique counsellis. So the Graecians often use the like word for a senate; and they, and the pagans use it for an assembly of elders or senators. As where it is said, "they called together the counsell, and all the senate of Israell;" the Syriack and Arabick say "all the presbiters or elders." And for these the word sanhedrim is usuall, both in the old and new testament, and for the juridicall assembly among the Hebrewes, and any counsell or consistory also of the Christians. And Selden affirmes, that the word presbiter, or elder, did comprehend those who were chosen into the sanhedrim, or made judges or teachers of theology'.

This word elders was also greatly propagated, both through the east, and westerne parts of the world. That of the Aegyptians is before mentioned. The like is of Midian and Moab, whose elders are named and explained to be "the princes of Moab," who were sent by Balack to Balaam'. The Cananites, who in the time of Joshua fled into Africa, and settled there, left their manners and language to their posteritie; and with them the like use of the word remained. Among the Carthaginians there is mention of elders, who deserved to be chosen more for virtue, than for age; and hence was their senate as Livy testifies: and their colleagues were called elders; as in that speech of Tyrius, "I have private commands to none, publique to the elders;" of which Livy saith, and calleth them elders, "for so (saith he) did they call the senate". Out of those elders the suf-

¹ Les anciens et l'assemblée des

γερεσίαν Ισραήλ.—Συνέδριον.—De synedr. lib. i. c. 14.

² Procopius. Vandalic. lib. ii.—Arist. polit. lib. ii. c. 9.—Γερόντων, Γερεσία, —lib. xxx. c. 7. et lib. xxxiv. c. 60.—Seniores, ita senatum vocabant.

³ Γερεσίαν.—Acts v. 21.—Πᾶσαν τὴν

⁴ Nu. xxii. 4, 7, 8.

fetes were chosen, who were chiefe governors and judges in those parts, who were the senate. With the Persians, before the age of fifty, none assumed that title; butt after that age, they goe into the number of those who are, and are called elders^u. The apostle saith, that a bishop must be blamelesse^w; the Syriack and Arabick render it, “an elder” must be blamelesse. That the elders sate uppon the polished stones in the holy circle, we have the testimony of Homer; and Eustathius saith, that the antients called those elders, who were most honourable: the same poet useth the word in that sence in other places. In like manner the Trojans had their chiefe men, generalls, and principall men of the Trojans, by that name stiled, who were next unto the king^x. The like is expressed to be among the Lacedemonians, by the greeke authors; as where they say, “with the elders (for so they call the publique councill) the Lacedemonians would have the augury to be.” And the like use of this word was among those of Crete, and other parts of Greece^y. In Alexandria they had their chiefe senators, or elders. In a missive to the chiefe men of the people of Alexandria, the same word is used; and it cannot be meant of the clergy, bicause it gives commaund to looke to the watches: which notwithstanding the common acceptation, that among the Greekes the word *γερόντων* signifies the sanhedrim of elders, makes it evident, that it also signifies temporall governors or great men; and that likewise appears by the inscription of an antient marble brought out of Smirna into England, and some others of the earle of Arundell’s^z. Agreeable heerunto is that of Plato: “O Solon, Solon, ye Greekes are alwayes children; there is no graecian

^u Zenophon. Cyropaeda. Briffon. de regn. Pers. lib. ii.

^w 1 Timothy iii. 2.

^x Iliad α et ω. 1. — οἱ δὲ γερόντες.—ἡγήτορες Τρώων.—Optimates, duces, seu primates Trojanorum.

^y Plutarch. Arist. Aristoph. Dem.—Cicer. orat. in Lepid.

^z Alciatus. Gothofred.—*Ἀρχιγέροντες*. Primatibus plebis Alexandrinae.—Theodos. lib. xiv. et xxvii.—Lib. i. Justin. tit. de episc.

elder, you are all young men ! for you have no opinion of them, by antient tradition, nor any discipline gray-headed by time ^z."

Trochilus was called king and elder ; and the presbiters, or chiefe men, were wont to be called old men or elders. Among the Greekes and Latines it was usuall to say, " nothing is more antient," for nothing is better. Severus made his son chiefe of the judgments in Britain ; and gave unto him assistants, out of the elders that were his friends. And as the word was in use with the Pagans of the east for a name and dignity, so were also the words, a sanhedrim, a councell, a church, an assembly of elders, all signifying the same thing ^a. Among the Arabians the word alsheich, or xeque, signifies an elder ; not as one that intends religious offices only, butt given to morally learned men, and to princes, in the commonwealth civilly. Avicen, their famous physitian, is termed the elder and prince ^b. And the same title is given by them to Mahummed, and it is a frequent title in the arabick manuscripts ; as that of the senior de Chemia his booke, mentioned by our old poet Chaucer, " As his boke senior wol beare witnesse &c ^c."

The chiefe magistrate of the Tyrians is called elder ; and men of other dignities of lesse account are likewise so stiled ^d. And it is related, that the Phoenicians made themselves a captaine, not by haereditary succession butt by praerogative of merits, whome they called an elder ^e. The court of the Areopagites of Athens, and the councells of other commonwealths, used to be stiled senates, or an

^z In Timaeo. ^a Aristot.—Dionys. Halicarnas.—Nihil antiquius, pro nihil melius.—Συνέδριος.—Synedrios.—Assessores.—Συνέδριον, ἑλληνική ἐκκλησία γερόντων.

^b Senior princeps, et senior et princeps.

^c The chanon's tale.

^d An-

tonin. p^t 2. tit. xvii. c. 9.

^e Fortalit. fid. lib. iv.

assembly of old men or elders^f. And many instances more out of the eastern authors and histories, so much as is extant of those nations, may be found; wherby it is apparent, that the word elders was in generall use among them, for persons of eminent worth, dignity, office and wisdom, for magnates, great men. And in like use it was also in the western nations, who called the members of their publique counsell, senators; and the counsell, the senate of Rome, which was instituted by Romulus of those who excelled in counsell, wisdom, and virtue. Wheruppon it is sayd, that unlesse counsell, reason and knowledge, had bin in the old men or elders, our auncesters had not called the supreame counsell by the name of senate; and senators were not so called, untill they were ranked among the elders^g. The word senior is used by the latine authors, and that before Romulus; and so farre from signifying old age, that the age of a senator was butt 25 years, or as some hold, but twenty, when he might be admitted^h.

The senate of women, instituted by Heliogabalus, called them "senators of both sexes, and senatrices." The Penates are called, senators of the gods: and those who were usually stiled the chiefe men, the highest men, the peeres, the fathers, the best of the nobles and the nobility, are called also by the Romans, senatores and senatusⁱ.

Of this use the word elder was throughout the western nations, and all Europe over. In Denmarke and Sweden the senators, who are the rick's senators the counsellors of the kingdome, have the

^f Sigonius.—J. Sarisburiens. etc.

^g Cicero in Catone majore.

^h Virgil. *Æneid.* i, vi, viii.—Livius, lib. xxxvi. c. 32.—Sigonius, lib. ii. c. 2.—Lipsius, in Tacit. annal. n. 52.—Rosin. Livy. Cassiodor.

ⁱ Lampridius. Vopiscus.—

Senatores utriusque sexus, et senatrices.—Marianus in vit. S^{ti} Desid.—Optimates, summates, procures, patres, optimi nobilium, et nobilitas.

highest ranke among them; and the title of excellence, taken by every one of them. And every where in Christendome, and other cuntryes, those in command, dignity and honor, the counsellors and great men, have the title of senators and elders. In the barbarous Latine, Italian, French and Spanish, seignior and seigneur, which is butt senior or elder, is used for dominus^k. And thus it was in relation to vassalls, wherof there are testimonies among the Westro Goths, and Longobardes, and other lawes, "no land without a lord." So they say, "our lord and elder the king; and, thou hast killed thy elder, or lord." In the acts of the councells, and monuments in Spayne, especially in the time of Charles the Great, held in France, the words lords and princes used to be expressed seniors, or elders: as "to his elder," or lord, the excommunication must be made knowne. From the latine senior comes signior, seigneur, seigniori, all from elders; also fleur and fire contracted from that of senior. And for domina, lady, signora. Seignioria, signoraggia, signoreggiamento, fennorio and seignurie for "lordship, empire and principallitie^l. God is called signior, seigneur, fennor by the Italians, French and Spanish; as in latine they say, "O Lord our God^m." And at this day, when they speake to kings, princes and other great men, they use the words seigneur, fleur, fire and the like, from senior, all of them derived from that word elders.

The next word, which I find generally to have been in use for expressing of great men, is that of prince; which in the text is by the syriack rendred, in our word, magnates great menⁿ.

^k Formul. c. ii. Ansegis. apud pistas an^o 869. c. viii, ix. ^l Nulle terre sans seigneur.—Gallant du franclee, c. vii.—Dominus et senior noster.—Cap. Car. Calv. Syn. Worm. c. ii. p. 8.—Occidisti seniozem tuum.—Burchard. decret. lib. xix. c. 34.—Resp. Hisp. lib. v. c. xi.—Domini et principes.—Seniori ejus.—Burchard. decret. 11. c. iii.—Dominatus, imperium, principatus. ^m Domine Deus noster. ⁿ 2 Chron. xxx. 2.

The word prince is agreed to be derived from the latine word princeps, the proper acceptation wherof is the same with primus, the first or chiefe; and so it is rendred in the French, “the chiefe men^o,” and in this sence it is often used by the Latine authors. “Wheruppon, he who in the citty did excell the rest in authority, and who obtained the first place in dignity, was called prince^p,” and this use of the word was taken up generally by the latin authors describing great men, and persons of the highest ranke and quality. The greeke word for “princes,” comes from the same ground; and the word, from whence it is derived, signifies, “I am the beginning, the author, the original, the first¹.” The Athenians had the like word, derived from that word which signifies also the first. Answerable wherunto is the swedish word foerst for prince, that is, first, and chiefe: the like in Germany, where a prince is called furst, as furst von Anhalt, the prince of Anhalt. The like is in Denmarke, where they use the word forst for prince. In the Roman armies they made choyce of the strongest, and highest bodyed men, who for the prime of their age were called principes; and from thence the second place, or warde in the maine army, was called principia^r; wheruppon is that speech of Thraso in Terence, “I will follow the principes,” therby choosing to himselfe, the best and safest place^s.

Our great doctor in titles of honor, to whom I acknowledge myselfe much indebted in this and other points of learning, holds, that all those, who had barons under them, were duely stiled princes^o. And accordingly, in the agreement betweene prince Lewellin of

^o Les princepeaux.

^p Cicero, Virgil, Ovid, Pliny, etc.—Quique primum

dignitatis locum obtineret princeps appelleretur.

¹ Ἀρχοντες.—Ἀρχω.—

Πρύτανης.—Πρώτος.

^r Godwin. Rom. antiquit. p. 259.

^s Terent.

Euph. act. iv. scen. 7. Ego ero post principia,

^t Seld. Tit. hon. p^t 1. f. 275.

Wales and king Edward the first, one of the articles was, that the homages in Wales should remaine to the king, except five baronies in Snowdon; bicause he could not conveniently call himselfe prince, unlesse he had some baronies under him^a. Selden goes further, that earles and all above them are (saith he) cleerly princes; as in France, where twixt viscount and count is a speciall dignitie of princes^w.

We find in the histories, where our parlements are mentioned, the name of princes frequently given to the great men, the lords, members of it; as the king "with consent of my princes;" and "by authority of the kings and princes," as well of Scotland as of England, a graunt was confirmed. In another place is said, "by the common councell of the bishops and princes;" it was not pleasing to the princes; and divers of the like expressions are obvious in the historians of those times^x. So it is sayd of the marryage of H. 1. that it was "by the councell of the princes;" and in his time matters are related to be done "in the assembly of the princes." Agreeable heerunto was the opinion of the judges in king James his time, that there are other princes besides the king's eldest son, as dukes, marquises and earles; of whom there will be occasion to speake perticularly heerafter^y.

^a Tho. Walsingham an^o 1278. Quia se principem convenienter vocare non potest, nisi sub se aliquos barones haberet.

^w 1 Tit. hon. p. 256.

^x An^o 605 et 700. — Cum consensu principum. — Authoritate principum. — Tho. Walsing. — Mat. Paris. — Hoveden. — Radûs de Diceto, etc. An^o 707, 720, 747, 787, 799, 824, 835, 966, 970, 982, 1012, 1014, 1037.

^y Eadmerus, lib. vi. p. 136. Consilio principum. — In conventu principum. — H. 14. Ja. BR. f. 31. b. 32 MS.

In the text, "And thou Bethlehem in the land of Judah, art not the least among the princes of Judah, for out of thee shall come a governor, that shall rule my people Israel:" the greeke translation for "princes," is the same as for "governors," and by the latine, rendred "in ducibus," captaines or generalls of armyes as the greeke word also denotes; and the Syriack is, "amongst the kings; and out of thee shall come a king" &c. The ethiopick is, "of the princes; and out of thee shall be borne a king, a governor" &c. The arabick hath it "king, and governor;" some say "princes, some, dukes, some, kings and governors:" all agree it was intended of great men, and of the greatest the Messiah to come.

The Dutch annotations expound the word princes, to be "rulers of thousands, governors and leaders of the people, great men." The greeke worde ^a hath the same signification, as hath bin remembered, which is translated, "princes, dukes, chiefe judges, magistrates," and the like great men. The hebrew word ^b for "princes," signifyes those who are rulers, that have and exercise dominion. The first mention of the word that I remember, is of the princes of Pharaoh, then in use in the time of Abraham ^c.

The Hebrewes ^d had princes of tribes; and they were also called princes of the congregation, and the princes of Israel, and princes of provinces, and captaines of tribes, of which latter Sigonius doubts. These princes had power of judicature, and used in great matters to be summoned to meet the king in councill; and did

^a Mat. ii. 6.—'Εν τοῖς ἡγεμόσιν Ἰσραὴλ ἡγούμενος.—Dux qui regat populum.—ἡγεμονεύω, duco exercitum, et ἡγεμονία, principatus imperium.

^b Ἀρχόντες.

^c Gen. xii. 15.

^d 1 Ki. xx. 14.

bind themselves by oath to doe that which was for the publique interest^c.

Our Saviour seemes to allude to this, when he promifeth his disciples to sitt uppon 12 thrones, judging the 12 tribes of Israel^f. And the Psalmist saith, "the rulers (which some reade princes) take counsell together" &c^g. Their power of judicature appears, where they with Joshua divided the countrey; and that they were a counsell, where they did sweare a league with the Gibeonites, and in other texts^h. Bertram saith that every father of a family was therein "a prince, a king, and a prophet;" and that "those who were over civill causes, in the highest judgment, were called princes and patriciiⁱ."

In the translation of the text of Matthew—"Neither be you called masters; for one is your master, even Christ;" the greeke word is properly rendred your prince or teacher: and another version of it is rendred, "Be not called captaines, princes, chieffes, fathers, teachers; for one is your captaine, prince, chiefe, father, teacher, Christ^k." From hence may cleerly be confuted that fancy, lately increased into an opinion and practise, that civill reverence and distinct titles to great men ought not to be given: no man to be called prince, lord, no not sir or master; butt all such appellations they hold unlawfull: and their tenents are rather to be pittied, then to be persecuted, which will but increase their number. By the same argument, that they must not call any one lord or master, they must

^c Menochius, lib. i. c. 6. col. 42.

^f Mat. xix. 28. Lu. xxii. 30.

^g Psal. ii. 2.

^h Jos. xix. 51.—Jos. ix. 15, 18, 19.

ⁱ P. 28, 129, 142.

Princeps et Regulus et propheta.—Qui supraemo judicio civili profuerunt dicti sunt principes et patricii.

^k Mat. xxiii. 10.—Οὐ καὶ θνητὸς ὁ Χριστός.—Seld. de syn.

1b. ii. p. 338.

neither call any one captaine, teacher, no not father; for all these significations are borne by the worde, as well as master. It will not be impertinent, upon the title of great men and in this time, a little to inquire into this opinion; the ground wherof is deduced from a mistake of that text of St. Matthew, where our Saviour instructs the multitude and his disciples, saying, "the Scribes and Pharisees sit in Moses seate:" that is, they were rabbins in dignity, fully ordeined, and members of the sanhedrim; who, in the time of Christ and his disciples, did flourish before others in the presbyterian dignities, as farre as the Romans permitted them; and taught according to the institutions of Moses, and upheld the continued succession from him; exercising that jurisdiction which was averse to that introduced by our Saviour. The text goes on—"All therefore whatsoever they bid you observe, that observe and doe; butt doe not ye after their workes." To the lawfull commaunds of those in authoritie they were to submitt, and to obey them; but not to doe after the workes of the Scribes and Pharisees. And Christ gives the reason, "for they say and doe not:" they make professions of godlines, but they doe not live answearable therunto; a course too much followed in our times. Another reason is given; "for they bind heavy burdens, and grievous to be borne, and lay them on men's shoulders; butt they themselves will not move them with one of their fingers." This is the admonition of our Saviour to his disciples, not to doe thus as the Scribes and Pharisees did; not to do to others what they would not have done to themselves; not to impose burdens on others which they would not beare themselves; which ought to be observed, both as to spirituall and temporall burdens, by all great men, and members of publique councells, and by all in authority¹. The constitution of our parlement is excellently equall;

¹ Mat. xxiii.—V. 2.—De synedr. Seld. lib. ii. p. 346, 335, etc.—V. 3.—v. 3.—V. 4.

that what burdens they lay on others, they must beare their share of them. The text saith further of them, “ but all their workes they doe for to be seen of men ; they make broad their phylacteries, and enlarge the borders of their garments ^m :” they are full of vaine ostentation ; they looke more after the prayse of men than of God. Their phylacteries were scrolles of parchment, in which the law was written ; and they ware them, and made them broad, that they might seeme to be the greater observers of them ; and enlarged the borders of their garments, the fringes wherof were to putt them in mind of the commaundements, wherof they would outwardly appear to have a larger memory than others : butt their pride follows, “ and love the uppermost roomes att feasts, and the chiefe seats in the synagogues ⁿ .”

In the house of lords, in our parlement, every great man takes his place according to his ranke, which is certainly knowne : and in the house of commons, as he comes ; and there all are equall, to avoyd pharasaicall pride.

The further pride, and ambition of these great men, appears in the next verse ; “ that they loved greetings in the marketts, and to be called of men, rabbi, rabbi ^o .” The greetings or salutations are heere putt distinct from the being called rabbi, and are severall things : the Pharisees tooke a pride to have reverence done to them in the greatest concourse of people, where most might take notice of it, (in the marketts) and publicly greet them, and give honor to them.

^m Matt. xxiii, v. 5.

ⁿ Nu. xv, 38.—Matt. xxiii. 6,

^o V. 7.

Our english poet had not so great an opinion of these greetings, and honor, where he saith —

“ Oh what is honor butt an exhalation,
A fiery meteor soone extinct and gone;
The breath of people, and the tounge's relation
Which straight is ended when the voice is done;
A morning dew dry'd up with noon dayes sun ! &c.^p”

The title and honor of rabbi among the Jewes was of greatest honor, and given to their greatest men; and heere it is expressed with a doubling, “ rabbi, rabbi,^q” to denote their ambition the more. Our Saviour proceeds to his instruction; “ butt be not ye called rabbi;” that is, be not ye ambitious, like the Pharisees, to be of the rabbinicall dignity, to be made rabbins, great men, members of their great sanhedrim, judges according to their institution: “ be not called rabbies,” that is be not rabbies, as the word to be called signifies to be the thing, to be so created; as in that passage of Ruth^r, where the elders say to her in their benediction, “ be famous in Bethlehem.” The Chaldee, Syriack, and Arabick render it, “ her name shall be called in Bethlehem:” so the spanish Jewes, and others and as many say, thou shalt be, thou shalt have a name famous in Bethlehem; as the same thing to be called so, and to be so. Which is also exprest by the evangelist; “ blessed are the peace makers, for they shall be called the children of God:” that is, they shall be so. And a little after; “ he that shall breake these commandements, etc. shall be called the least in the kingdome of heaven; and he that shall doe, and teach them, shall be called

^p MS. of the life of E. 2.
lama nombradia, etc.

^q Math. xxiii. 8.

^r Ruth iv. 11.—Y

great; that is shall be least, and shall be great in the kingdome of heaven^a. The like may be noted from that blessed prophecy: "behold a virgin shall conceive and beare a son, and shall call his name Immanuel;" as his name, so himselfe was, God with us^b. Thus Caufabone takes the greeke word to be called, the same as to be so. And the like among the latines: as with the antient lawyers, to be called is to be substituted in a place; "to be called to an inheritance, to be called to offices or honors," is to be inheritor, and to be in offices and in honors^c. And with us, to be called by writ to the lords house is to be created a baron; to be called by a writt to be sergeant att law is to be made a sergeant; to be called to the bench or barre, in our innes of court, is to be a bencher or barrister; so to be called rabbi is to be that great man, that magistrate to whom the Jewes gave that appellation. Butt our author cites a M. S. of his owne, with this version; "you shall not call them masters," from whence is concluded, that these titles ought not to be given to great men: and it is true, that our Saviour forbids his disciples to affect this dignity of presbiters; and possibly would not have them acknowledge it in those who, by virtue therof, would persecute his doctrine and disciples. But all other versions run as our translation; "be not ye called rabbi;" that is (as hath bin showed) be not yee of that dignity, and such great men and officers who are so contrary to my doctrine, and discipline. It follows in the text; "for one is your master, even Christ; and all ye are brethren." The greeke word is rendred by the latine, "prince, and doctor^d:" Luther, and the english and belgick translations have master, not doctor, though they are much the same; and the word master is of a larger fence than

^a Matt. v. 9.—Matt. v. 19. ^b Isa. vii. 14. ^c Καλεῖσθαι pro το εἶναι.
—L. xix. Tit. de injusto rumpo, etc. testamento.—Lib. ii. D. tit. Unde cognat. Vocari ad haereditatem: ad munera vel honores vocari. ^d Διδάσκαλος, κατηχητής, princeps, doctor.

we use it, and signifies one greater than others, and magistracy and government come from it^x. Heere is also objected; if we be all brethren, why should there be a distinction of titles, and great men? The distinction is plaine, in Christ and his doctrine, and the profession and practise of it; we ought to be all brethren, and to agree as brethren (oh! that we did so) in his truths. But as to government and magistracy, a distinction and order is necessary, and enjoined; and we are to pray for kings, and all that are in authority; and we are to render honor to whom honor is due; and they are reprov'd who despise government, and are not afraid to speake evill of dignities^y.

Our text goes on; "and call no man your father, uppon the earth; for one is your father which is in heaven." The rhemish translation saith; "and call none father to yourselfe, uppon earthe^z." That of Wickliffe is, "and nyle ye clepe to you a fader, on earth." Luther and the Belgick agree; only some other versions doe leave out the word "you, and yours." The french and english translations are the same^a. And it were a streined collection heeruppon, that for a childe to call his naturall father so is forbidden. Butt the sence of the former verses is heer continued: those who were of the rabbinicall dignity were called fathers, as the highest titles for their great men; so there was the father of the sanhedrim; and in the generall title of the Talmudes, is the chapters of the fathers^b, and so were they of the rabbinicall dignity stiled. And our Saviour admonisheth his disciples, not to call any of those rabbins their father; which could be scarce otherwise, if they were so ordeined; and

^x Alciat. parerg. viii. c. 10.—Festus, in magisterare. ^y 1 Tim. ii. 2.—Rom. xiii. 7.—2 Pet. ii. 10. ^z Matt. xxiii. 9.—Und solt niemand vatter heissen.—End en sult niemandt uwen vader noemen. ^a Et n'appellez aucun en la terre vostre pere. ^b Capitula patrum.

would be the greater daunger to divert them from the discipline of Christ, wherof they were to be followers, and to sucke in those manners which would corrupt it. As to the words " heer uppon the earth," every one knowes by the word earth to be often meant the whole world; and so the land of Israel and the land of Judah, often in the Scripture, is to be understood; and elsewhere, for the land subject to the government of the Hebrewes; and the land, in a received custome of speech with the Hebrews, only to signify the land of promise, of the Israelites^e. And so the arabick bookes may be understood, that this interdiction was threefold; of names or titles within that land, in that commonwealth, to be usurped, given, or taken; nor out of that land, any where, was the use of those names and titles of great men, proper only and belonging to the Hebrewes: and therefore this interdiction cannot be forcibly urged or applyed to names, dignities or titles in other nations. The text is further; " neither be you called masters; for one is your master, even Christ." Other versions instead of masters have it, " be ye not called princes, primates, dukes, governors; for Christ is your prince, primate, duke, governor^d." No man will inferre heeruppon, that bicause Christ is our governor, therefore we must have no other governour as to our civill government: or bicause Christ is our master (as the english, Luther and the belgick translations render it) therefore there must be no more masters and servants; which relation is often mentioned after this, and rules given by the Holy Ghost, for the dueties of it. Butt the cleere meaning of this whole recited text, and of the subsequent verses, is to forbid the disciples of Christ to be proud, or to be ambitious of greatnes and power, or to labour to get into the rabbinicall dignity and office as the Pharisees did;

^e Terram Israelis.—Τὴν Ἰσραήλιν γῆν.—צֶרֶחַ תְּהֵן גִּינ, terram.
xxiii. 10.—Principes, primates, duces, gubernatores.

^d Matt.

wherby the discipline of Christ might be perverted : that they should not exercise the judiciall synedryall faculty and dignity of the Jewes, nor mixe themselves in those matters. Butt heer is no prohibition att all, of giving civill honorary titles to men, according to their rankes and the custome of their countreys; the which seemes not att all to be forbidden by this text, or any other in my remembrance; butt rather to be justified, if not injoynd by divers holy scriptures, and by the primitive and later Christians practise therof. As where St. Paul stiles himselfe “ a doctor of the Gentiles ;” that is a rabbi, master, or teacher; and the like afterwards, “ a preacher, an apostle, a teacher of the Gentiles.” The like appellations of rabbins are found in severall other texts, as well as of prophetts and teachers; “ and first apostles, secondarily prophets, thirdly teachers” are reckoned; and in another place, apostles, prophets, evangelists, pastors and teachers^e. And the expresse titles (saith Selden) of master, doctor, rabbi, father, abbot, primate, president and the like, were every where, throughout all ages of Christianity, most usuall, and undoubtedly given and taken notwithstanding this interdiction which, by the opinion of antient and later times received, did not pertaine to any other land, commonwealth or age butt that wherin it was spoken^f. And these titles before mentioned were given and taken by the primitive and later Christians, followers of the apostolicall discipline, in all times, out of the land of Israell, notwithstanding that interdiction. We find them often, in salutation and speech, given to Christ himselfe; as St. Peter saith to him, “ master, is it good,” etc. And againe, “ master, behold the fig-tree,” etc. So his disciples say to him, “ master, eate,” etc. And, “ master, who did sin ?” etc. wherin the word rabbi is used. And

^e 1 Tim. ii. 7.—Τὸν διδάσκαλον τῶν ἐθνῶν.—2 Tim. i. 11.—Acts xiii. 1. 1 Cor. xii. 28.—Ephes. iv. 11.

^f De synedr. lib. ii. p. 346.

Nathaniel saith to him, "Rabbi, thou art the son of God," etc. And the like in many other places. To John is given the title of rabbi^g, and we doe not find it condemned. And the admonition, "be not called rabbi," cannot be extended to salutations; which are only in the power of him that makes or giveth them, and not in the power of him to whom they are given. The perswasion of divers in our time, uppon a misapprehension of this text in St. Matthew, may excuse this digression.

I returne to the title of princes which occasioned it: which we find also, among the Jewes, to have bin applyed sometimes to the chiefe priest, who is often called the prince of the people; which our translations render the ruler of the people. They are reckoned together princes, captaines, rulers, king's servants, nobles, judges and the like, in fundry places of Scripture^h. The prophet saith of Tyre, "whose merchants are princes, whose traffiquers are the honorable of the earthⁱ."

As it was among the Hebrewes, so in other nations, the great men, rulers, officers, governors, nobles, counsellors are stiled princes: as the princes of Pharaoh, the princes of Moab, of Midia, of the Philistines, of Ammon, of Persia, of Edom, of Babilon, of the North, of the Gentiles, and princes of the world^k. The graecian archontes were the same, as hath bin noted; and the like acceptation of the word, among the Romans. The captaine, whom the young men chose for their sports, was called "the prince of the youth." The

^g Mar. ix. 5.—Mar. xi. 21.—Jo. iv. 31. and ix. 2. and xi. 8.—Jo. i. 49. and iii. 2. and vi. 25. and iii. 26. ^h Acts xxiii. 2. Hugo Grotius, ad com. 5.—
ⁱ 1 Ki. ix. 22.—Pro. viii. 15, 16, 17.—Dan. iii. 2, 3, 27. ⁱ Isa. xxiii. 8.
^k Gen. xii. 15.—Nu. xxii. 8.—Jof. xiii. 21.—1 Sa. xviii. 30.—2 Sa. xi. 3.—Est. i. 14.—Jer. xxxviii. 4.—Ezek. xxii. 29.—Math. xx. 25.—1 Cor. i. 6.

emperors themselves tooke upon them the title of prince, instead of king; as Augustus tooke the government upon him under the name of prince¹. And Suetonius saith of Caligula, “there was not much wanting, butt that he should presently take upon him the crowne, and change the forme of a principality into that of a kingdom.” The title of prince of the senate (which was knowne familiarly in Rome, and so might be used without envy) furnished Augustus, and his successors, with the title of prince.

In Naples there are many who stile themselves princes; as the prince of Benevento who was before a duke, the prince of Capua, of Tarento, of Salerno, and the like; who are butt great men and nobles of Italy.

Villeroy speakes of the prince of Sicily. Pasquier speakes of the great men of France; being united “they doe make a generall body of all the princes and governours, by whose advice the differences were composed between the king and his people^m.” Haillan saith, that “Pepin assembled the generall body of his princes and great menⁿ,” and frequently the nobles and great men of France are called the princes. So they have bin in Germany from ancient time. Tacitus relates, that the princes of Germany did consult of the smaller matters^o; and mentions the “hundreds of the people” joyned to the princes, and their power of judicature. Butt of later times it is sayd, that none is a prince butt he who hath a territory. Yett att this day the 7 electors are called princes; then there is, in

¹ Hospin. de orig. fest. et Rosin. lib. vii. c. 3. Princeps juventutis.—Tacit. anal.—
Nomine principis sub imperium accepit.

^m Recherches de la France, p. 44.—

Se composa un corps general de tous les princes et gouverneurs, par l'advice des quels, etc.

ⁿ F. 84.

^o De moribus Germanorum.—De minoribus rebus principes consultant, etc.—Lib. vi. Centeni ex plebe.

their dietts, the colledge of “ecclesiasticall princes, and of temporall princes,” who are the great men and nobles of Germany^p.”

To all these severall appellations may some be added in generall; the perticulars being reserved for their proper place. In England they had very antiently the title of consuls for their great men; as Hengist is said to be the first consull, and duke from Germany, of the english nation^q. And the name consull is frequent in the saxon lawes, and historyes of those times. They had also the titles of etheling, thane, thegen, “heretoche,” patritian, halfe koning, holdes, highgereves, masse thanes and world thanes, vidams, rulers, sub-rulers, valvasours and divers others: and they had most of the same titles for great men in Scotland^r.

The Hebrewes had the title of chiefe of the fathers, heads of tribes, heads of families: they had the word nasich, that is anointed, and signifies prince, father, doctor, teacher, a guide, a duke, a capitaine. The word chasmanim rendred great men, and geber a governor or ruler, shophetim for judges, sar a prince that exerciseth dominion, and the like^s.

The appellations of great men of the Graecians have bin remembered, and most of the latine titles; who had also very many others that doe occurre in their authors, whose language and courtship afforded them a large scope of expressing their veneration of great

^p Knichen. Com. ad duc. Saxon. c. iv.—Millerus de ration. stat. imper. German. c. xii.—Principes ecclesiastici et principes politici.

^q Ethelwerd, lib. ii. c. 2.

Primus consul et dux de Germanio gentis Anglor.

^r Heuzoga.—Regulus,

subregulus, praepositi, vice comites, vice domini.—Meyre Degner ךֿ poplo Degner.

^s גביר, שפטים, שר, השמנים, נסיד, אלפ.

men, and seeking to gaine their favour by flattering titles and magnifying their power; wherby they sought to please them, and to obtaine their own designs by these means, att which they were as forward as any other nationⁱ.

In Germany they have the titles wherof there will be occasion to speake perticularly; as of those in France who have also their vi-dams, chastellains, banrents* and bannerets. The like titles are in Spaine; and that of ricos hombres, which is a title of dignity and of great men among them, though the word hombre rico is simply for a rich man^u.

The lawes of Hungarie mention the same titles with other nations; and besides, the parochiani, vaiwods and bani that is principall magistrates. The like of Bohemia. And their titolati in Naples^w.

In Sweden they have the same titles as in other countreys, and much agreeing with the Germans, in some of them. They call them anses who take care of great affayres, of matters of peace and warre and common safety; then they have their governours of territories or precincts; and generally they call a great man, an eminent person, an adelsman a kind of elder^x.

* Antistites, magistratus, heroes, clarissimi, praefecti, ingenui, illustres, magnifici, honorabiles, inclyti, moderatores, fatrapae, aulici, capita, consilarii, iudices, dynastae, megistanes, potentes, tribuni, domini.

* Vid. Selden's Titles of honour,

p. 865, 1058, which seems to appropriate this title to Scotland. (M)

^u Alexio

Venegas apud Guardiolum de nob. c. xl.—Salazar de Mendoza, lib. i. c. 9.

^w Steph. Werbuez. p^t i. tit. 2. et p^t ii. tit. 4.

^x Hoffdinger, & landts

hoffdinger.

To all these titles, and great men, some few cautions may be proper. They are called elders, and they ought not to give the counsell of young men to their prince, such as Rohoboam tooke to his great damage^y: butt they must give the counsell of old men, sage and stayed, and grounded uppon experience, and tending to moderation and peace. They are called princes, highest and first among the people, and are like the tall caedars in Lebanon, eminent above the lower shrubbes; they ought to be the more carefull what counsell they give to their masters: they must not doe like the princes of Pharaoh, who seeing Sarah, (who was fayre) they commended her before Pharaoh; and she was taken into his house^z. Uppon this text the dutch annotations say, that these princes were the great men of Pharaoh's court, who (say they) commonly seeke to please their masters with such kind of services^a. Butt more severe is the expositor^b, who saith, "first the common people admire and publish the beauty of Sarah; the fame wherof presently comes to the princes, and from them to the king, to whome Sara is brought either (as it seemes) by his commaund, or (saith he reproachfully) by the lust of his courtiers. Behold therefore (saith the expositor) the licentiousnes of great men, the parasiticall ingenuity of courtiers, who use to gett the favour of their kings by such ways of baseness." This may be a good caution to princes, not to lay low and profligate their honors, and consciences, to serve unlawfull ends; least the prince of princes send his plagues (as he did in this text) uppon the persons, and houses where such wickednes shall be counsell'd and practised. They must principally indeavour to act, and advise for the honour of God in the first place, and for the good of their king and countrey; which

^y 1 Ki. xii. 10.^z Gen. xii. 15.^a Published an^o 1657.^b Paraeus in comment. in hunc text.—Vel ejus jussu, ut videtur, vel aulicorum libidine. En ergo magnatum licentiam, aulicorum gnathonicum ingenium, qui loenociniis gratiam regum captare solent.

will be their owne greatest good and satisfaction. In remembrance of the titles of rabbies, masters, teachers, etc. they must also remember the interdiction of our Saviour; not to affect these honours and offices ambitiously; not to be like the Scribes and Pharisees who sought to gett into the presbiteriall dignity in pride, and for selfe ends. And surely to canvas to be chosen a great man, or a senator, and that (as is too common) by disorderly debaucheries or rewards, or for private ends; is most dishonorable to the persons who are so chosen; to the assembly into which they have the honor to be admitted; and to the government of their countrey. They who seeke for places are the least worthy of them. They must not love salutations in the market places, and to be seen of men; unlesse it be to give a ready access to suitors: if they love and practise this civility, it will procure them the love of men. And to an english generous spirit, nothing is more distastful than a tedious attendance upon the leisure, or humors of great men; and nothing gives them more content than a ready admittance to relate their buisnes, a patient hearing of them, a quick dispatch, and a courteous demeanor to them.

The counsell of great men ought to be in the first place, to regard what therein will be pleasing to God, and what not; and to know this, they have no way but themselves to aske councell of Him, before they give councell to others, or undertake any great action. Like the spies of Dan, when they said to Jonathan, " aske councell we pray thee of God, whether our way which we goe shall be prosperous ". And like the princes of Hezekiah, who counselled him to restore the worship of God ^d. Such counsells will be as that which the wise king describes; " Ointment and perfume rejoyce the heart; so doth the sweetnes of a man's friend, by hearty counsell ". The hebrew

^a Jud. xviii. 5.

^a 2 Chron. xxx.

^a Pro. xxvii. 9.

note is; " Counsell of the soule it must not be dissembling, or for private ends, or to please the appetites of their superiours; butt it must be hearty, from the plainnes and integrity of the soule, and cleer judgment of reason and conscience. Their delights ought to be in doing good, in relieving the oppressed, in helping them to right which suffer wrong, in advancing the honor of Christ more than their own, in being a terror to evill doers and a prayse to them that doe well: and these delights will accompany them, when this worldly greatnes will be att an end."

They must not be great and high in their own conceipts, and carryages. Butt great men must be great in piety, great in wisdom, great in counsell, great in courage, great in experience, great in learning, great in integrity, and great in humility. If they will learne to increase their honor, the Holy Ghost instructs them in divers scriptures^f: " Before honor is humility; and before destruction the heart of man is haughty. A man's pride shall bring him low; butt honor shall uphold the humble." The more honorable a man is, he ought to be the more humble; and the more humble he is, he will be the greater and more honorable. Our Saviour's counsell is sufficient; " Learne of me; for I am meeke, and lowly in heart, and ye shall find rest unto your souls^g."

^f Pro. xv. 33, and xviii. 12,—Psal. xxix. 23. ^g Mat. xi. 29.

And nobles.

THE latine word here used in the writ is “proceres;” which word signifies properly stone worke to hold up the summer and chiefe beame, or brackett or shouldering piece, the principall timber worke in the building: from whence the chiefe men of the citty are called proceres, bicause they are eminent in the citty, as those beames are in the building. And such chiefe beames, and supports of the royall throne, are and ought to be the nobles of a kingdome^a.

The word proceres is often mett with in the histories, and records of England: as that of king Leyr, who is said, “by the counsell of the proceres of his kingdome, to give his two daughters in marryage.” And that king Elidurus summoned all the proceres, and princes to counsell. Cassibelan advised with the proceres; so did Lucius, and many other of the british kings^b. So it is related of the saxon kings, Egwin, Edred, and Etheldred; and of the danish king Cnute, Edward the Confessor and others. The same word is often used in the later histories. And in our records, and writs of summons to the parlement the word hath bin constantly used to this day; “with the magnates and proceres of the kingdome^c” and in the ordinary pleadings of our law, the word is of generall use and acceptation for the nobles, and such as we call peeres of the realme.

^a Proceribus.—Capita trabium.—Principes civitatis proceres appellati sunt, quod ii ita in civitate eminent, sicut in aedificiis illi.

^b Galfrid. Monumeth.—Consilio procerum regni, etc.—Math. Westm.—Ponticus Verunnus, etc.

^c Cum magnatibus et proceribus regni.

The hebrew word^d for princes is also rendred by the latine proceres, and, such as have and exercise dominion, as our proceres of England doe. The holy story, speaking of the weight of gould which Solomon had yearly, mentions besides, that which he had of the merchants and of the kings of Arabia, and of the governors of the countrey; the latine version hath it, “of the proceres of the country^e.” So in the advice given to the kings of Syria to take the kings away, and to putt captains in their roomes, the latine saith proceres^f; and where the psalmist saith, “the rulers take counsell together,” the latine is “proceres;” and the same for rulers and nobles in severall other scriptures^g. The like use of the word is frequent by the latine authors: as in that of Virgil; “afterwards other proceres, and messengers to the proceres;” and “Servius among the proceres or nobles;” and Juvenal hath the same word in this sence also^h.

The French render the word proceres, “the greatest and the principall men of a towne, the governorsⁱ.” The Italian and Spanish have it in the same sence. So the Dutch say, “the chiefe and best in a state^k.” And generally with us, and in all writers of histories, the word proceres is used for the chiefe men, nobles, peeres, captains, governors and such as are in chiefe places and authority; and most properly with us, for the members of the lords house in parlement, the peers of England.

Proceres is not improperly rendred in English nobles. And the word noble in our expressions, as in other countryes, hath both a

^d שרם^e 1 Ki. x. 14, 15.—Proceribus regionis.^f 1 Ki. xx. 24.^g Ps. ii. 2. and cxxxviii. 1.—Dan. i. 3. and v. 1. 6. 18.—Jonah iii. 8.—Mar. vi. 21.^h Æneid. i. 3. Post alii proceres. et delectos ad proceres.—Livy. i. ab urb. Servius inter proceres.—Satyr. viii.ⁱ Les plus grands, et les principaux d'une ville,

les gouverneurs.

^k De opperste oft beste in een stat.

generall, and more strict acceptation. In the generall it is taken for every person who is of worth and eminency, of good birth education and parts, virtuous and of a gallant mind and disposition; he is termed a noble person, and comprehends in this sense lords and gentlemen; especially such as are descended of noble, virtuous and rich parentage and extraction, or created nobles by their prince's favour. Our saxon auncestors used the word *athel*, which an old writer saith is in English noble¹, and *etheling*, one descended from nobles, by birth noble; *ing* denoting descent or birth. And in the elder times of the Saxons *æthel* denoted every gentleman, and so is to be understood in Bede; where he saith, "with all the nobles of his nation;" that is turned by king Alfred in the Saxon, "with all the ethelings or nobles of his nation or people." And, in divers other places of Alfred's translation of Bede, *nobilis* is in like manner turned^m. And in this sense, for chiefe men and persons descended of nobles, and counsellors to the king and kingdome, there is often use of the word *nobiles* in Bede, and other authors of those times. After duke William's invasion the lesser barons, which were a great number, sate in parlement as well as the greater barons untill the latter end of king John's reigne; and all were comprehended under the terme of nobles, according to that generall distinction, in most countryes, of the greater and the lesser nobilityⁿ.

The Jewes (as learned men conceive) had two words that signified as *homo* and *vir* doe, in their stricter sense, *Adam*, and *Ish*. They called such as were in the state of nobles among them *beni ish*, the sons of great men; and the rest *beni Adam*, the sons of men of common ranke. And so is that place in the psalmes.

¹ *Athel* anglice *nobilis* est.

^m *Æthel*.—Hist. eccles. lib. ii. c. 14. & lib. iii. c. 1. Cum cunctis gentis suae nobilibus. — *On eallum Æthelingum hyr ðeode*.—

² Tit. hon. Seld. 5. 601.

ⁿ *Nobilitas* major, et *nobilitas* minor.

“Hear this all ye people, give ear all ye inhabitants of the world, both lowe and high, rich and poore together.” Munster turnes and explaines it; “as well the sons of ignoble men as the sons of nobles, rich and poore together.” The septuagint render it accordingly; “as well nobles as the sons of men of inferiour ranke.” The dutch translation agrees heerwith; and the french translation is expresse, “as well men of low estate, as nobles.”

When Moses by God's commaund numbred the people, it is sayd of the heads of the houses of their fathers; “these were the renowned of the congregation, princes of the tribes of their fathers, heads of thousands in Israel.” Paulus Fagius termes them nobiles; and such indeed nobles should be, and able as these did to declare their pedigrees. The vulgar Latin renders them; “the most noble princes.” The syriack version is “magnates and duces;” the samaritan version calles them “deputies of the congregation.” The arabick version is, “chiefe nobles of the tribes of their fathers.”

When Moses remembers to the people what he had said to them; “take ye wise men and understanding, and known among your tribes, and I will make them rulers over you;” the same is expressed “nobles.” So is the greeke word in the epistle to the Corinthians rendred nobles by most versions. But the Æthiopick affords a good

° Kimchi in rad. אִישׁ Drus. observat. lib. iii. c. 19. אִישׁ אָדָם—Filii viri

אִישׁ בְּנֵי אָדָם Filii hominis בְּנֵי אָדָם Psal. xlix. 1, 2. P Tam filii hominum

ignobilium quam filii cujuscunque nobilis, simul dives et pauper, O'ite γε-
γενηεις καὶ οἱ υἱοὶ τῶν ἀνθρώπων.

Beide gemeinyne man ende heeren. Tant ceux

de bas estat que les nobles. Num. i. 16. 18. Nobilissimi principes.

Deputati à congregatione. Nobilissimi tribuum patrum suorum.

Deut. i. 13.

note, rendring it “not many good:” “for you see your calling brethren, how that not many wise men after the flesh, not many mighty, not many noble are called.” The Æthiopick (as hath bin said) for noble, is “not many good^r”; the Arabick is, “not many whose stocke is noble²”; the Syriack is, “not many borne of a great stocke³,” as noblemen should be; the rest of the versions run, “not many nobles.”

From the Jewes the Graecians had the same expressions, by severall words denoting one discended from great parentage, a gentleman or nobilis: and so for nobilitas, which Aristotle calles antient wealth, or virtue and the dignity of the ancestor, and the like; the first authors of it being stiled famous, and honorable, and the like^b. And as the Hebrewes called such nobles, men knowne among your tribes^c; and from them the Graecians called them, men famous, noted; of the Graecians the Latines had their expression of nobilis, “one worthy to be knowne” and taken notice of for his eminency, greatnes, birth and virtue^d. Therefore antiently also among the Romans, before the monarchy, the title of nobilis was given to none butt him that had “the right of images;” or some ancestor att least that had borne some of their greater offices or their magistratus curules, as censorship, consulship and such like; from whose image kept they had the right of images, and were esteemed nobles^e. From thence we may have had the use of the word noble, as notable, and given to those discended of noble parentage. And so the French terme such, “puissant, powerfull,

^r Εὐγενεῖς. 1 Cor. i. 26.—Non multi.

² Quorum genus est nobile.

^a Magno stemmate natos. ^b Εὐγενής.—Γενναῖος.—Εὐπαρίδης.—Εὐπάτωρ.—Εὐγένεια.—Ἀρχαῖος πλῆτος καὶ ἀρετὴ ἐκ τιμότης προγόνων ἐπίσημοι καὶ τίμιοι.

^c Deut. i. 13.

^d Nobilis quasi nescibilis.

^e Rosin. antiquit. Rom.

lib. x. c. 19. Jus imaginum.

the grandees, the princes, the nobles, those who are very well knowne^f." The Italians expresse them "powerfull, noble, well knowne^g." And the Spanyards say "noble, and most knowne^h." The Dutch expresse it by "well borneⁱ"; and in an antient saxon glossary, generosity is interpreted by "noble birth^k."

By the academiques or platoniques, and peripatetiques, civill nobility or gentry was specially reckned among externall things that are good; butt more largely it is expressed in that quadripartite division of it in the schoole of Plato.

"Nobility or gentry is divided into four kinds^l: such as are borne of good and just parents, they call noble; if the parents be men of power or governors, their children also they call noble; those also we call noble whose auncestors had honor either from commaund in the warres, or from any of those games wherin crowns were rewards to the victors; and lastly him also they call noble that hath his own inbred dignity, and greatnesse of spirit; of all which, this is the best kind of nobility. So that nobilitie hath its ground either from auncestors eminent for justice, or from such as were powerfull, or from those that had that (other) glory, or from a man's own worth."

The sum of all is thus exprest by a latine author; "they are called nobles, and powerfull men, who have great power and authority in them^m."

^f Puissans, les grands, les princes, nobles, fort cognues.

^g Potenti, nobili,

cognosciunto.

^h Noble, o notable.

ⁱ Wellgeboren.

^k Gene-

rositas *Ædelbornnerre*.

^l Διαρρεῖται ἡ εὐγένεια εἰς εἰδὴ τέτταρα, etc.

^m Dicuntur nobiliores et potentiores, quorum magna est potentia et autoritas.

Butt to come to the more strict and more proper acceptation of the word, as to our present purpose; by the word nobles among us is signified the peeres of England, the lords of the parlement. He who is a prince, a duke, a marquis, an earle, a viscount, a baron and with some a banneret is to be ranked in the number of the nobles of England, and properly stiled a nobleman, and one of the nobility of England: of whom, in their severall rankes and order, it will be most agreeable to my intended purpose severally, and distinctly to discourse.

The first or chiefe of the nobles of England is the king's eldest son, whose title is prince of Wales. And to begin with it higher. In the lawes of Howell Dha, king of Wales, mention is of the heir apparent to the crown whom they called urchrychyd, which is interpreted by etheling or edling, (so faith Seldenⁿ is his copy) who is to succeed after the king, and is honored before all that are in the court after the king and queen; and is the son, or brother of the king. Those words aetheling, atheling, and edling were in use with the Saxons for the king's son, or him who was next to succede him. As appears in some of the faxon lawes, and by the old rhyme of Robert of Gloucester cited by Selden in these words

The gode trywemen of the londe wold a abbe y made king,
The kind eir, the young child Edgar Atheling.
Wo so were next king by kunde me cluped him atheling.
Thervore me cluped him so, vor by kunde he was king^o.

Likewise in the times of the Saxons, the son of the king was called clito, and clitunculus; as is conceived from the greeke word that

ⁿ 2 Tit. hon. p. 601.

^o Leg. Athelstani regis, p. 71. et leg. Canut. c. lv.

—MS. in biblioth. Cotton. in rege Harold.

signifies illustrious: as is to be seen in a charter of king Edgar to the Benedictines, where among the subscriptions one is, “ I Eadmond clito, lawfull son of the said king, have signed ^p, etc.” And in another charter of king Ætheldred to the abbey of St. Albans, is this subscription; “ I Æthelstan son of the king, with my brethren clitoes, have consented.” And divers of the like are to be found ^q.

After the time of the Normans the word adeling, for the king's son, remained in use; as appears in that passage in Ordericus Vitalis, who mentions “ William adeling, whom they esteeme lawfull heir of the kingdome of England,” for the son and heir of H. 1^r.

And this atheling is in another place of the same author, for the same reason, called “ William adeling son of Henry king of England.” And among the lawes of Edward the confessor by an old writer is observed, that “ king Edward kept with him Edgar, and brought him up as his son; and bicause he purposed to make him his heire he called him etheling.” So this title, both before and after duke William's time, was in use for the king's son, and for the heire of the crowne. The title of prince of Wales was transferred to the sons and heirs apparent of England, from those princes of Wales, of North Wales especially, that in the elder times, being

^p Κλυτός. — MS. in biblioth. Cotton. et not. ad Eadmer. p. 159. — Ego Eadmond clito legitimus praefati regis filius, etc. ^q Ego Athelstan filius regis cum fratribus meis clitonibus consensi, etc.

^r Eccles. hist. lib. xii. p. 869. Gulielmus adelingus quem Anglici regni legitimum haeredem arbitrati sunt.

^s Ejusd. hist. lib. iv. p. 522. Gulielmus adelinus Henrici regis Anglorum.

^t Rex Edwardus Edgarum secum retinuit et pro filio nutrit. Et quia cogitavit ipsum haeredem facere, nominavit etheling.

Welche, held the countrey under the kings of England by the names of princes of Wales, and lords of Snowdon.

Some place the beginning of the title of prince of Wales, in the king's eldest son, to be 39th H. 3: when Polydore saith, "that the king made his son Edward prince of Wales, and governor of Aquitaine and of Ireland"; from whence it arose, that after this time every king, following this precedent, used to make his eldest son prince of Wales. But Selden holdes, that there is no warrant from this charter which gives Wales to the prince by the words, "together with our conquest of Wales, Gascoigne and Ireland," etc; that therefore the speciall title of prince of Wales, as it belongs to the son and heir apparent, began in him^w.

Others place the beginning of this title in Edward son of E. 1. uppon his father's sending for his queen, who was delivered of him at Caernarvon (as hath bin remembred): and this young child, who had no blemish in his honor and could speake as good Welch as English, was accepted for their prince, and summoned to parlement by that title^x.

The first charter of creation is that of E. 3. to his son the black prince; wherein the chief perticulars of the investiture, the crownet and ring of gould, and rodde of silver are expressed^y: and this is said to be "according to the usage^z;" as if, before that time, the princes of Wales had used to have such investiture. Since that time

^u Edwardus regis filius fit Walliae princeps, simulque Aquitaniae ac Hiberniae praefectus, etc.

^w 38 H. 3. Rot. Vascon. m. 8. n. 25.—Floril. an^o 1254.—Mat. Paris, f. 1187. Una cum conquestu nostro Walliae, etc.—2 Tit. hon. p. 594.

^x Hist. Wales, p. 376. 33 E. 1. Rot. claus. m. 12. dorso. et 7 et 32 E. 1. m. 1.

^y 27 E. 3. Rot. cartar. m. 27.

^z Juxta morem.

it hath bin to almost all the sons, and heirs of the king. H. 4. created his son Henry prince of Wales, by consent of parlement; and the rest of our kings after him. The last, in parlement, was of king James creating his son prince Henry^a.

The Hebrewes had their princes of tribes, whom interpreters judge were the first borne, in a direct line, from the twelve sons of Jacob from Judah the first borne; and then againe the first borne of that first borne; and so of the rest^b. In the empire, from ancient time, the heir apparent or successor designed hath bin called king of the Romans. It was first "prince of the youth"^c; afterwards, "Caesar," which begun in Ælius Verus; then in the westerne empire he was called king of Italy, king of Germany, and king of the Romans which continues to this day^d. And the severall titles of Caesar, princeps juventutis, and nobilissimus given to the heir or designed successor of the empire, are testified by inscriptions of coynes and marbles, and their approved writers.

In the easterne empire the title of sebastocrator, that is august emperor; and the title of despote, that is as much as lord, sire or monsieur absolutely spoken, were given to the heir, or designed successor.

The eldest sons of the kings of France, and of Navarre, are called princes^e; and of France, by a speciall title, the daulphin, from a guist of the countrey of Daulphenois bestowed on the crowne with this condition, for the heir to beare this title.

^a Co. 8 rep. Prince's case.—31 H. 6. rot. parl. n. 48.—11 E. 4. rot. cartar. n. 14, 15. et rot. parl. etc.—8 Jac. rot. parl. p^t 9. n. 17.

Cornelius à Lapide, etc.

Germaniae, rex Romanorum.

^c Princeps juventutis.

^e Thuanus, lib. xliii. p. 496.

^b Toftatus Abulensis,

^d Rex Italiae, rex

Salazar de Mendoza writes, that att the same time, when H. 3. made his son prince of Wales, the king of Spayne's eldest son was made prince of Asturia, uppon the like occasion of marryage; and this title is continued to the king's eldest sons there^f. In Sweden the sons of their antient kings living uppon the sea coasts, and sometimes not abstaining from pyracies, they called Naas Ranungar and Wijkingar, that is sea kings; afterwards they called their kings sons Ijuncters, that is nobles; and in after times they had the titles of dukes, and hereditary princes. And by act of a late ricksdagh, the then comt palatine Charles Gustave, nephew of the king Gustavus Adolphus, being declared heir of the crowne, in case of the death of the queen then reigning without issue; he had therby the title of prince heretier, and of kingly highnes given to him.

Att this day not only the eldest son, but all other the sons and children of our king have the title of princes; though other particular titles as duke of Yorke, duke of Gloucester and the like, belong also to them: butt they are called princes as antiently all the sons of the king were called clitoes. As in the charter of Edgar formerly cited, the second son in his subscription saith, "I Eadweard clito begotten of the same king:" and in the other of king Etheldred, "I Athelstan son of the king, with my brother clitoes have consented^g." The like of the title of etheling is noted by Wm. of Malmesbury; "that the sons of the kings of England were commonly called ethelings^h," not much different from what they are now called, princes.

^f Orig. de las dignidades de Castelle, lib. iii. c. 23.

^g Ego Eadweard eodem rege clito procreatus.—Ego Athelstan filius regis cum fratribus meis clitonibus consensi.

^h De gest. reg. lib. i. c. 3.—Filii regum Angliae vocantur ethelingi.

Ismael is said to begett twelve princes¹; and this word is frequent for the king's seed, and for the chiefe and first borne of each tribe. In France all the king's children are termed princes of the bloud; and injoy great priviledges, "and a great regard is had of them^k."

Generally the children of all kings have, att this day, the title of princes given to them: and the children of some of the chiefe princes of Germany, as the electors and some others of them, doe now also assume the title of princes.

The next title in ranke to that of prince is the title of duke, which Milles derives, "duces a ducendo," from leading an army; and hence was the phrase "to make warre," as the poet doth warrant it.

"In bloody warres themselves they doe ingage
Which constantly they with the Latins wage^l."

Another of our heraulds faith, "that the title of duke was primitively for the most part taken from military imployment; and that in the originall it signified nothing butt a generall, or graund chiefetaine^m." And the great master of that as well as of other learning confirmes it, that the dukes were alwayes militaryⁿ. In that fence our english historians often mention them: as, "the princes of the kingdome advised together, that Godwin the consull

¹ Gen. xvii. 20. ^k Haillan. f. 200, 201. On a tousjours fait grand cas des princes du sang.—The term "princes of the blood," in France, is extended to all those who are descended from the reigning branch or family of the kingdom. (M)

^l Catalogue of honor, p. 22. Duces à ducendo.—Ducere bellum.—Hii bellum assidue ducunt cum gente latina.

^m Guillim Display of heraldry, p. 278.

ⁿ 2 Tit. hon, p. 319.

should be their duke or generall, in military affayres^o." And that the title of duke was military, his investiture by girding a sword about him is some testimony; wherof there will be occasion to say more in another place. This was after the manner of the Hebrewes, in whose story we find often mention of such who were governors, and captaines, stiled by the name which we translate duke: "as duke Teman, duke Omer, etc. and these were the dukes of the sons of Esau, etc. dukes of Sihon, etc." and the word there used to expresse them signifyes properly a leader, or captaine^p.

From hence the Graecians had the like use of the word; as in the easterne empire there was the great duke who was, as our high admirall, a military officer^q.

From thence also in the same sence it was used in the old empire, where the lieutenants or presidents of provinces or frontiers, under the generalissimo, were called dukes. As "the duke of Britany, the duke of Syria, etc^r. who were military officers." And the titles of dukes and counts, and dutchy and countey, were synonimous; only the office of dukes was alwayes military: as "the duke of the Britaines" had 14000 foot, and 900 horse, under his commaund^s. Some would deduce this title of duke from the old Germans hertzogen, so they call their dukes: butt our author saith, that the Romans feldome received, butt gave lawes and customes to other nations. The originall of the german word hertzog, for duke, is derived from their description of a chiefe ruler or master of the expe-

^o Consilium inierunt principes, quod Godwinus consul dux eis esset in re militari,

^p Gen. xxxvi.—1 Chron. i.—Exod. xv.—Jos. xiii.

^q Μεγας δὲξ.

^r Magistri praesentales militum. Novel. 27. de com. Isauriae, Britanniae dux, dux Syriae, etc.

^s Novel. xxiv. c. 6. Dux Britanniarum,

dition in a military buifnes; and the more probable to be taken from the Romans[†]. And in their's, and the gothique times, the name of dux was difperfed in the territories of Spayn, and used there from the 650 year of our Lord; and denoted one that had military forces with his governement.

In Poland the title of vaiuod is the fame with duke, and denotes a captain or governor of the militia: and in Bohemia they had their dukes of the like nature and imploymēt^u.

The like may be noted of Scotland, Sweden, Denmarke and other countreyes who have the title of duke in the fame fignification. It is agreed by moft authors, that the name of dux had two notions; one fignified an absolute fupremacy, and not differing in nature from the fupreame title of a king; the other notion of it was, as it hath bin, honorary, officiall, or feudall under a fuperiour.

Of the first fort of foveraigne dukes there have bin many in England: that title was given to Brute the first foveraigne, whom our ftories mention heere by the title of “famous duke or captaine^w”; and we reade of the duke of Cornwall who came with him, and was foveraign in his territory. And in the time of Caffibelan, of the duke of Troynovant, that is London, and of his foveraignty there; and of Æfclipiodorus duke of Cornwall, with his Britons fighting againft the Romans to regaine their liberty; and, of Coel duke of Colcheſter, who afterwards tooke the title of king, whoſe daughter Helena was mother to the great Conſtantine.

[†] Ein heer dees zugs. Praefectus vel magister expeditionis.—(Virdux. M)

^u Regn. Bohem. vol. edit. à Frebor. 1602.—Chron. aut. reg. p. 28. ^w Galfr. Mon. Inclitus dux.

Hengist, who was sufficiently a soveraigne, and came in to the conquest of this nation, is termed “the first consull and duke of the english nation, who was of Germany^x.” The Northumberland dukes began in Otha brother to Hengist; and although they were soveraigns there, yett they continued in that title almost 100 years, and would not take the title of king untill afterwards^y.

This title, as a soveraign duke (and so he fully was) is given to Moses, who is termed the famous duke, captain or leader of the Jewes; and another faith, that he was great emperor or commaunder of the Hebrewes^z. Joshua, who was a soveraigne prince, is stiled captain or leader of the Hebrewes^a. The judges also and their kings are stiled leaders of the people; and the hebrew word is translated duke, prince, leader or ruler. And in this sence is used by the prophet where he sayes of our Saviour; “Behold, I have given him for a wittnes to the people, a leader and commaunder to the people.” And the rabbins say, that every duke or dukedome, is a kingdome without a crowne^b.

The Graecians held no great difference, when Philip of Macedon (as Justin relates) “would not be called king, butt duke of the Graecians^c.” In the stories of the more barbarous times it is taken for such as were not crowned for kings, yett acknowledged no superior; and Martiall speaking of Domitian faith,

^x Ethelwerd. lib. iii. c. 2. et lib. iv. c. 2. Primus consul et dux qui de Germania fuerat gentis Anglorum.

^y Galfrid. Monumeth. lib. ii. c. 11.—Ponticus Virunnius, lib. ii. hist. Brit.—Mat. Westm. p. 27, 28.

^z Gothofred. in fine. Inclytum Judaeorum ducem.—Magnus Hebraeorum imperator.

^a Hebraeorum ducem.

^b כל אלופ. מלכתא דלארמא. Ducem, principem, Isa. lv. 4.—Col aluph malcutha de la thega.

^c Nec regem se Graecis sed ducem appellari iussit.

“ In many things, Domitian, of thine,
The image of a supream duke doth shine ^d. ”

They have in Germany, and other countreys, the name of archduke, as the archduke of Austria; and there was the archduke of Saxony, and an archduke of Lorrein, who were soveraignes in their territories. Although this super-eminent title, of itselſe, gives not so much of soveraignty, without authority of force to mainteine it; as a lesser and lower title backed with power and dependancies, which doe both create, continue and make effectuell all titles whatsoever.

Therefore the title of the duke of Russia, who is also written great duke, though it may sound with some lesse than archduke, yett is knowne not to be inferiour to it in soveraignty; and he makes no scruple to write himselfe emperour. Neither will any deny the soveraignty of the great duke of Florence, and of the king of Poland in Lituania, who writes himselfe duke therof^e. They have in Germany the dukes of Baviere, of Saxony, of Prussia, of Holstein, of Pomerland, of Mecklenburgh, of Curland, of Brunswick, of Lunnenbergh, and others free princes of the empire; who although they have a dependance uppon the emperor, and acknowledge a supremacy in him, yett are they also soveraigns within their owne territories.

Such likewise were in France, heertofore, the dukes of Normandie, Brittain, Aquitaine, etc. and divers other territoriall soveraignties were there; butt all att length, by escheats, or otherwise, were reduced “ to the ranke of simple lords ^f. ”

^d Plurima quae summi fulget imago ducis.
rangs des simples seigneurs.

^e Wielkie ksiase.

^f Aux

The other notion, of duke not being a soveraigne, is as it hath bin honorary, officiall or feudall under a superior; such were those military officers, called dukes, serving under some prince, or state whom they acknowledge to be their masters: and their originall is held to have come from the northerne nations. And most authors agree concerning this title of duke, both as soveraigne and as subordinate, and that in most kingdomes they who held the second place, next unto the kings and their sons, are, according to the forme of the emperor's army formerly, now called dukes as a ranke of nobility and great men^s.

We reade in all times of subordinate dukes in this nation; as when the brittish king Bladud having three daughters he, by the counsel of his nobles of his kingdome, gave two of his daughters in maryage to the dukes of Cornwell and Albanie. And in divers of the british kings reignes such dukes are mentionedⁿ.

After the arrivall of the Saxons heere, we find mention of duke Eldot, a Britain, who tooke Hengist prisoner. In the time of king Arthur the dukes were assembled, with the nobles, in publique councells. Butt the title of duke became more frequent in the time of the Saxons, as is noted by the historians and authors of those times¹; and a duke was then taken for a great man or magistrate. And in Latine the names of "duke, consul, comes, prince, ruler, sub-ruler," etc^k. are confounded together; and in our idiome earle, alderman, hertzogen for the same with duke^l. Ingulphus fetts

^s 2 Tit. hon. Seld.—Spelman. glossar.—Cambd. Britan.—2 Tit. hon. Seld.—Sir Rog. Owen MS.

ii. c. 11.—Mat. Westm. p. 27, 28.

Affer. Menevens.—Ethelwerdus.

subregulus.

Westm. etc.

^k Ponticus Virunnius, lib. ii. hist. Brit.—Galfr. Mon. lib.

^l Spelman. glossar. hoc verbo, et Bede:

^k Dux, consul, comes, princeps, regulus,

^l Chart. Wigorn. eccles. Huntingt. Florent. Wigor. Mat.

downe the charter of king Edgar to the abbey of Croyland attested, after the bishops abbotts and abbesſes, thus: “I Orgar duke have appointed; I Ailwin duke have confirmed,” etc. And many more of this nature are in the charters of those times^m; wherby, and in divers passages of our histories and records, it appears, that those whom they called dukes were of “the chiefe of their nobles, and members of their publique councellsⁿ.” After the time of the nor-man invaſion king W. I. having himſelfe only the title of duke of Normandy, neither he nor his ſucceſſors would beſtow the honor of that name on any of their ſubjects; untill the time of E. 3. who in the 11th year of his reigne did, in parlement, create his eldeſt ſon being then earle of Cheſter, into the title of duke of Cornwall. And in the 36th year of his reigne he made his ſon Henry duke of Lancaſter, and his ſon Lionel, duke of Clarence: he created alſo the dukes of Glouceſter and of Yorke; and his graundchilde created the dukes of Hereford, of Surrey, Exeſter, Aumerle and Norfolke^o. And as att the firſt the title of duke was military and officiary, heere as in other nations, and the ſame with earle; yett afterwards it became more diſtinct, and meerly honorary and hereditary: according to that of Sir Henry Spelman, ſpeaking of the creation of dukes by E. 3. he ſaith, that afterwards many peeres excellling in nobility, territories and abundance of riches, did aſcend to this high pitch of honor, rayſed therunto by the king’s charters. And to them nevertheles (ſaith our author) “Nothing of magiſtracy, nothing of territory, nothing of office or juriſdiction was conferred^p.” And it is

^m Ego Orgarus dux conſtitui.—Ego Ailwinus dux conſtabilivi.—An^s 694, 725, 747, 797, 816, 874, 970, 975, 998.

ⁿ Duces et proceres in conſilium.

^o Milles Catalogue of honor. Guillim. Cambden. Brit. Seld. 2 Tit. hon. Spelman, etc.—25 E. 3. rot. parl. n. 18. 38 E. 3. rot. parl. n. 36, 25.—21 R. 2. parl. m. 14. n. 23, 35.

^p Gloſſar. hoc verbo.—Faſtigium hoc aſcendunt regiis eveſti codicillis.—Nihil magiſtratus, nihil territorii, nihil muneris vel juriſdictionis confertur.

certain, for matter of territory, if one be created duke of Norfolke or of any other place, this gives nothing to him of land, or of jurisdiction in that countey. Butt our learned author speakes not of their right to be members of parlement^a, which is the highest magistracy and jurisdiction, and is conteined in the very charters of the creation of dukes and other nobles, and essential to their peerage. Coke affirmes, that every duke being of full age ought to have a writ of summons directed to him, to come as a peer of England to the parlement^r: and in all the rolles of summons, as high as their first creation by E. 3. downwards, they are inserted. Also every son of a duke is by the courtesy of England called a lord, butt hath therby no place or vote in parlement, unles he be called therunto by a perticular writ of summons; and then also he must be contented, in the parlement, to take his place and precedence as a baron, and according to his creation; though out of parlement he hath another precedence, as the son of a duke.

The generall of David's army, Joab, our translation calles chiefe and captain; the vulgar Latin, the greeke and Syriack versions are ducem. So Abner whom wee translate captain of the host, the vulgar Latin calles leader of the militia of Israel, the Syriack sayes generall of the army of Israel; and Amasa captain of the host of Judah, is also called by those versions leader, and generall of the forces of Judah; and the like is in sundry other places^s.

In Germany the title of duke was also military, and by reason of this, and other titles, given to every son of him that had his province or dukedome: there are some dukes who have neither territory nor

^a Jus comitiorum.

^r 4 Instit. c. i. p. 1.

^s 1 Chron. xi. 6.—

1 Kings ii. 32. Ducem militiae. Ducem exercitus.

jurisdiction,

jurisdiction, butt the name and title only : that of duke hath bin much propagated since the french empire. It is usually the next degree of nobles under the king ; and in Italy the Lombards chose the title dux before that of comes, for the highest under the king, and so in some parts of France, and Germany : and some dukes had counts under them, although they were also subordinate themselves, as appears in that old lawe ; “ if the person who hath committed the fact be so powerfull a man, that the count cannot distraine him ; then lett him acquaint his duke with it, that he may distraine according to law .” Which shoves that the duke was subordinate and officary.

In the time of Otho the great the feuds annexed to dukes became hereditary, discending (as now with us) to the issue male : and under Conrade 2. this was extended to the graundchildren of him that was first invested with the dignity ; and since, as well to females as to males.

In Italy the title of a subordinate duke is as antient as the year 570. And in France the princes of the blood^a, who are the principall of their nobles, have most of them the title of duke, as the duke of Anjou, the duke of Orleans, the duke of Alencon, etc. and there are also other dukes, as of Bullion, of Montmorency, of Rohan, of Longueville, of Buefort, and many others. One of their authors acknowledgeth, that they had the name of duke from the Romans, and from thence began to make use of it for the governor of a province^w : that afterwards dukes became words of principalities,

^a Leg. Bavar. c. v. art. 8.—Si talis homo potens hoc fecerit, quem ille comes distringere non potest; tunc dicet duci suo, et dux illi distringat secundem legem.

^w Princes du sang. ^w Pasquier Recherches, p. 107. Les Francois apprirent des Romains à user de ce nom de due.

and they would have rayfed themselves unto a kingly power; butt were reduced under the king of France, and the dutchyes became feudall, and the dukes subjects to France in the first ranke of nobles.

Scotland hath the same title and ranke of dukes as England hath. And of Sweden it is sayd, that the name and originall of duke is military^x, and anfwears to their native word of heertog, or hirtug, from an army or military expedition whose commaunder he was: att length for estimation of virtue and remuneration, they became such by right of inheritance, and were created of the order of the nobles^y.

For the solemne investiture of dukes, they were girded with the sword of the dutchy, as John of Moreton, afterwards our king John, was, and crowned duke of Normandy^z. So was the duke of Britaine invested, who had his ducall robe of cloth of gould, and the antient habit was a purple coate furred with ermins, and a robe of estate uppon it of the same, with the sword, crownet or chaplet^a. The creation of the duke of Cornwall was only by girding him with the sword, not by a ring, a rod, and a coronet^b. In that of 9 R. 2. is mentioned the girding of the sword, the cap and golden circlet, the delivery of the patent by the king, and the duke's being removed to a higher seate in parlement^c. Some dukes were invested without either coronet or sword; only putting on a ducall cap, giving a rod of gould into their hands, and with delivery of the charter of creation. So was John duke of Lancaster

^x Loccennius de antiquit. Sued. p. 48. Ducum nomen et ortum ex militia esse, etc.

^y Ex ordine nobilium creabantur.

^z Hoveden, p^t ii. p. 792.

^a Hist.

de Bret. lib. xiii. c. 71.

^b 25 E. 3. rot. parl. p^t i. m. 18.

^c 9 R. 2.

rot. parl. n. 14, 15. m. 5.

invested duke of Aquitaine, by assent of the parlement of England ^d. Sometimes the charter was read in parlement, and homage done to the king by the new duke: and that investiture by the sword only is in other creations, and the clause of support or creation money inserted in the patents ^e.

In Scotland the title of duke begun under Malcolme 2^f, then promiscuously used with comes; butt the first remembrance of it in their records, is 11 Rob. 3. when dukes were created in their parlement ^g. And this king created his son David duke of Rothsay, and his brother Robert duke of Albany. And the investiture or creation of a duke there (when with ceremony) is by the king's putting on the belt and sword, the cap and the coronet, giving him a golden verge, and then the charter patent of creation. And the ducall robes are also putt on him, with ensignes and standards.

The antient soveraign dukes of France were invested by a solemne imposition of a rich crowne or coronet on them, without annointing; and the duke was to have four countyes, or four baronies for every countey: butt there is no prooffe of the perticular number of the countyes ^h.

For the ceremonies of investiture of a duke by delivering of banners to him, and by kissing the pomell of a sword held by the emperor; also by charter in the empire; and by a ducall cap and scepter in Italy, with the formes therin used by the pope; and of their crimfon velvet robes, cappes, coronets and other ceremonies,

^d 13 R. 2. rot. parl. m. 9. n. 21.

^e 21 R. 2. rot. parl. m. 14.

^f An^o 1020.

^g Spelman, Selden, Hollingshed, etc.

^h La Sallade,

f. 67.—L'Oiseau, c. v.

they are att large fett downe by Selden ⁱ, to whose learning I acknowledge myfelfe a great debtor.

To thefe nobles, rayfed to this eminency of degree and honor, fome caution may not be improper. They muft not be fuch as the prophet complains of; “Oh! my people, they which leade thee, caufe thee to erre, and diftroy the way of thy pathes.” And againe, “The leaders of the people caufe them to erre ^k :” the confequence wherof is in the fame verfe; “They that are ledde of them are diftroyed.” Like unto that which our Saviour notes of the pharifees, “They be blind leaders of the blind ^l :” and when dukes and nobles are blind leaders, Chrift telles us the iffue of it, “both fhall fall into the ditch;” like thofe violent men, who the wife man faith, “Doe leade their neighbour in the way that is not goode ^m.” This fentence is paffed againft both: “He that leadeth into captivity fhall goe into captivity ⁿ.”

Thefe dukes and other nobles (this caution may ferve for all of them) ought to be fuch leaders as wifdome fets out herfelfe to be; “I leade in the way of righteoufnes, in the middeft of the pathes of judgement.” And the benefit of fuch leaders is declared, “That I may caufe thofe that love me to inherit fubftance, and I will fill their treafures ^o.” This leader wifdome, that is Chrift, is moft worthy to be followed, to be our duke and captain; and the wages which he gives his foldiers and followers, is the inheritance of fubftance in manfions not made with hands: her pay is treafure which cannot be corrupted or ftollen. Lett all nobles ftrove to be fuch leaders, and all men to follow them, and our chiefe leader Chrift Iefus, whom

ⁱ 2 Tit. hon. Selden, p. 338.

^k Ifa. iii. 12.—Ifa. ix. 16.

^l Mat.

xv. 14.

^m Prov. xvi. 29.

ⁿ Revel. xiii. 10.

^o Prov. viii. 20.

—Prov. viii. 21.

God hath given for a wittnes to the people, a leader and a commander to them^p.

The next degree of nobles is that of marquis. The word mark or marche denotes a limit, bound or frontier in the antient and later dutch, and rather in the language of those nations that overran the most part of Christendome under the names of Gothes, Vandals and such more. We say in England the marches, in relation to Scotland and Wales. The Graecians have the word in the same sence^q. The Latin hath the word marcha for a frontier, and commarchani for bordering neighbours, and margus used for Normandy, being the fouth march of France: so the spanish marche, the british marche for confine. The Germans use for it marken. The Italians have the word marchese. The French say marchiser to border or adjoyne to, and the Spanyards say a citty with its skirts or limits^r. And thus the word from those northerne nations hath spred itselke into the rest of Europe.

In England the word marchio or marquesse was used sometimes both for earles and barons, especially those that were lords marchers or lords of frontiers, whence is the true originall of it. And afterwards (as duke) it became a speciall dignity placed next beneath that of duke, and immediate above that of earle, as it is att this day.

We reade of Brianus son of the earle, marquesse of Wallingford, and of the lords marchers of Wales. "I wish that the wives and mothers of our marquesses would do foe on all occasions, to keepe

^p Isa. lv. 4.
britannica.

^q Μαρκῆσις & μαρκεσίην.
^r La ciudad o sus commarchas.

^r Marca hispanica. Marca

their countrey safe, and to remove the staine of shame¹." And att the coronation of queen Elianor, wife to H. 3. the lords marchers of Wales claimed to carry the canopy, in the right of marchers. So Mortimer, and others are called marqueffes; and the lord Nevill of Raby is declared marqueffe, in a pattend, in the beginning of R. 2. as one of the wardens of the scotch marches². Butt under this king the title of marqueffe (as it is a distinct title of honor) did begin. He created Robert de Vere, earle of Oxford, marquiffe of Dublin in Ireland for life; butt it was in him an english dignity, and by reason of it he was placed between the dukes and earles in parlement. Of this Walsingham writes, "that in this parlement a new dignity was created, unusuall with the English, the marqueffe of Dublin";³ the rest of the earles taking it amisse, bicause they saw him in a higher degree than themselves, and chiefly for that he was not more powerfull in wisdome or armes than others. In his patent is no clause of investiture; butt in the parlement rolle the chancellor declares the reason and merit of the creation⁴, and there is mention of the girding him with a sworde, putting a circle of gold uppon his head, the delivery of the charter to him by the king and his taking place between the dukes and earles. In the same king's reigne is a patent cancelled, by which John earle of Somersset is created marqueffe of Dorset⁵. And mention of a golden circlett putt uppon his head, with 35 markes a year for creation money. Another followes of the same date⁶, by which he is made marqueffe of Somersset, and men-

¹ Wm. Malm. hist. novel. lib. ii.—Jo. Sarisb. de nugis curial. lib. vi. c. 16. Utinam sic faciant uxores et matres nostrorum marchionum.

² Lib. rubr. scaccar.

Floril. an^o 1264, 1284. marchiones Walliae. marchisii, marchiones. — 1 R. 2. Rot. pat. p^t i. m. 13.

³ Creata est in hoc parlamento nova dignitas Anglicis in-

tueta, marchio Dubliniae.

⁴ 9 R. 2. Rot. chart. m. 13.—9 R. 2. rot. parl.

m. 3. n. 17.

⁵ 21 R. 2. rot. chart. m. 14. n. 23.

⁶ M. 12. n. 18.

tion of girding him with a sword, and putting a crownet on him^a. Butt the dignity of marquesse being taken from him, and the commons (in the succeeding reign) recommending his merit to the king and lords, and that he might be restored to the name and honor of marquesse; the earle kneeling prayed the king most humbly, that in regard the name of marquesse was a strange name in this kingdome, that he by no means would give him this name of marquesse; for by the king's leave, he would never beare, nor take upon him any such name in any manner: nevertheles the earle heartily thanked the lords and commons for their good will heerin^b.

The patents of creation of a marquesse in following times have not been alwayes alike: that to marquis Dorset by E. 4^c. mentions the girding of a sword, and the cap of honor; the crownett being omitted, though perhappes used in the investiture. The patent now used is the same with that of an earle, the word marchio being in the place of comes, and the annuity or creation money being 40 markes.

The greeke word for a marquesse hath bin remembred, and the german word markgraves, which literally denotes frontier earles or dukes^d. The word marchio occurs not in the empire till Charles the great; and in his time and after is often mention of marchiones for frontier governors. That the emperor H. 1. taking in Brandenburgh placed a governor there, and called him marchio^e. And att this day is the title of marquesse of Brandenburgh; so is there the

^a 21 R. 2. rot. parl. m. 9.

^b 4 H. 4. rot. parl. m. 18. art. 18.—Come le noun de marquis feust estrange noun en cest roialme.

^c 15 E. 4. rot. chart. m. 13.

^d Comites limitanei, duces limitanei.

^e Aimoinus de gest. Franc. lib. v. c. 2.
—Chron. Sitau, lib. i. c. 8, etc.—Cantzius Wandal, lib. iii. c. 16.

marquessé of Baden, and others. The creation and investiture of marquesses hath bin as of dukes and counts in the empire. In Naples they have the title of marquessé, and in the like signification as before^f.

In France a marquessé hath place betwixt a duke and count (as with us) and is of much later beginning than the feudall use of duke and count. About the year 900 some great dukes and counts, if their territories were frontiers, affected it in their stiles. Richard duke of Normandy is stiled marquessé of Normandy, and Baldwin, marquessé of Flanders^g. In the later ages marquesses have bin created in France, as other dignities, by the king's letters patents only. The sieur d'Aramont was by H. 2. created marquessé of the isles d'Or en Provence, and was to keepe garrysons on the frontiers^h. So the baron of Montmorency was created marquessé of Thury, the country a marquissate, and divers priviledges graunted to him. Att this day there be many in that kingdome called by that title.

In Spayne there was some like use of this title, and that from the frontiers; as the marques de las Espannas, the marques de Tortosa and others. H. 2. king of Castile and Leon made Alphonso count of Denia marquessé of the city of Villena, the marches of four kingdomsⁱ. The next was the marquessé of Sintillana, in the frontiers of Spayne. Of later times it became there more frequent, as in other kingdomes. They may sett a crownet on their armes, described to be a circle with rich stones on it^k.

^f Neapol. illustr. lib. i. c. 23. §. 1. 7.

^g An^o 991. Malmesb. de gest. reg.

Angl. lib. ii. c. 10. Marchuntius. Et Ferreol. Locrius in Chron. Belg. p. 182.

^h Choppinus de domanio, lib. i. tit. 5. §. 9. Chez du Chesne dans les preuves de la lin. 4. de l'hist. de Mont. p. 238.

ⁱ Salazar de Mendoza. Origin. de las dignidades, lib. iii. c. 13. Id. St. Garibay in H. 2. An^o 1366.

^k Garibay in H. 2. Un cerco guarnecido de piedras.

In Scotland the title of marquess began under king Ja. 6. who made John, son to James duke of Castle Heralld, marquess of Hamilton. In Poland marquesses are also reckoned among their titles.

The next degree of nobles to that of marques is the antient and honorable title of earle. Which name some derive from the Danes who changed the name alderman, into eorla and erle. Butt Spelman and Selden¹ shew some difference between them. The danish word ear, and ar, signifies honour, and earle, the same as alderman, and as grave with the Germans. Verstegan brings it from the faxon word ear which also signifies honour, and ethel or el which is noble; so ear-el is honorably noble. Loccennius mentions the scandian or gotique word jarl, and jerl, signifying the same with the german grave, and latin comes^m. Some would have the word earle the same with elder, and eolderman, of which titles somewhat is said before. The word eorl is used by our faxon auncestors for a prime man of the nobles, as Etherwerd the faxon writes of eleaven consuls whom the Danes call eorls; and Æthelstan distinguisheth the eorl and the alderman, as archbishop and bishop, in their wergild. Att this day the Danes in directions of their letters say, to the honorable and noble manⁿ.

In the faxon annales before the year 1000 after Christ, mention is made of Sidroc the elder eorl, and Sidroc the younger eorl, Osbern eorl, and Frona eorl, and Harold eorl, in the year 870°.

¹ Spelman. glossar. hoc verbo.—Tit. of honor, verbo Earle, p. 315.
tiquit. Sueo—Goth. p. 49.

^m An-
ⁿ Lib. iv. c. 3. Undecim consules quos illi (Dani) eorlas solent nominare.—Spelman. glossar. verbo Eorla.—Erlig och wellbirdig mandt.

^o Sidroc eorl alba, Sidroc eorl re gionez, 7 Orbern eorl, 7 Freona eorl, 7 Harold eorl.

And the latine translations doe render them comites. And the word earl is used in the saxon annals of king Etheldred's time, a little before Canutus; butt then it began to be generally taken for men of like dignity with ealdermen, which then was layd downe as to the higher titles, and eorl taken instead of it. And in the saxon fragment, of the dignities of the later times of their monarchy, earles and thanes are spoken of, butt not ealdermen. And the name of earle was in that age of such dignity, that W. I. in his saxon stile calles himselfe earle of Normandy, which the Latine translates prince of Normandy^p.

In our latin authors of the more antient, and later stories of our nation, and in our law proceedings, the word earle is constantly rendred comes; butt in our English, to this day, we say earle. Our antient author Horne saith in the French of that time, that the king hath companions to hear and determine att parlements, etc. These companions are now called countees, after the latine comites, and the countryes are called countyes^q. Another of our antient authors, Bracton, is to the same effect, that the king hath in his court comites and barones; "they are called earles or comites, as it were companions of the king^r." The king also stileth them, in matters of record, his counsels; not bicause antiently they were all of the blood royall (as it is sayd in the earle of Rutland's case) butt uppon a late custom taken up about 300 years since, and continued to this day. In the brittish language jarleth is an earldome, jarlesse a countesse, and jarle signifies an earle, a companion, a friend; and so are earles unto their

^p Lamb. peramb. Kent. p. 500. Chart. abba de Dury.—Willelm Engla kyng ⁊ eople open Nonmandie.

^q Mirroir des justices, c. i. §. 2. Le roy uft compaignions pur oyer et terminer aux parliaments: ceux compaignions sont ore appellés countees apres le latin comites.

^r F. 34. Quia comites dicuntur quasi socii regis.—MS.

Sir Rog. Owen, p. 321.

princes^s. It is noted, that this honorary title of the prince's friend^t, or friend to the king, was so frequent in the easterne parts, that we may with reason enough believe that it was thence derived into the roman state, and from them into other parts of the world. In the kingdome of the Jewes we see it in that of Hushai the Archite, who among the dignities of the court is singularly mentioned the king's companion^u: And the hebrew word properly signifyes a friend or a companion. So the Latine and Greeke reade it the king's chiefe friend, and the king's chiefe companion^w. In this place of the Chronicles, our translation calles Hushai David's companion; and in Samuel, calles him David's friend. The like are those whome Lyfias chose to lead an army into the land of Juda, called mighty men, of the king's friends^x.

The passage in Esdras is a good precedent for this custome, and for the bestowing of this title: he who was the wisest among the guard, that kept the king's body, the neereſt to his person, that most advanced trueth, him the king held most fitt to be advanced to that honor; and sayes to him, "Because thou art found wisest, thou shalt sit next me, and shalt be called my cousin^y." "So Aristotle (saith Laertius) lived with Amintas king of Macedon, as his companion and friend^z." So from that use it seemes, the phrase of the friend of God, to expresse a singular honor, had through great favour with God came to be used, as Abraham is called the friend of God; and our Saviour saith to his disciples, "Ye are my friends." Among the princes of Solomon is reckoned Zabud, a principall officer, and the king's friend^a. The Graecians had the word describing

^s MS. Sir Rog. Owen, p. 326.

^t Amicus principis. Amendem^{ts} p. 931.

^u 1 Chron. xxvii. 33.

^w חֲבֵרֵי הַמֶּלֶךְ Πρώτος φίλος τῷ βασιλείῳ, et ὁ ἀρχι-
εταῖρος τῷ βασιλείῳ. Comes.

^x 2 Sam. xv. 37.—1 Mac. iii. 38, 39.

^y 1 Esd. iv. 42.—1 Esd. iii. 4.—1 Esd. iv. 35.—V. 42.

^z Ἰατρὺς καὶ φίλος.

^a Ja. ii. 23.—2 Chron. xx. 7.—Is. xli. 8.—Jo. xv. 14.—1 Ki. iv. 5.

such a person; as in the acts of the councell of Chalcedon, saies Dioscorus, "Are ye seditious? Lett the counts come:" and the counts came in^b.

The roman emperors antiently had about them, beside their greatest officers of state, select attendants of court, knowne by the name of comites, companions and friends, who waited and assisted the emperour in his counsell and actions; which is the proper duty of an english earle, to his king^c.

Of comtes in Fraunce their ingenious author saith, that they were the invention of the Romans; that they were judges, and willing to support their grandeur, as if every one of them had bin taken out of the traine and company of the emperors^d.

In England, as elsewhere, there are severall kinds of earles: the first and chiefeft are called earls palatin, who were in a sort superiour in their territories; for to have the title of earle, or the seisin of a countey or earldome, and royall power in all things under the king was to be an earle palatin^e. The primary deduction of the name palatin, as it hath relation to a countey, was received heer doubtles, out of the use of the empire and Fraunce; where palatins are such counts as have, in their title, a speciall eminence in their dignity from a relation (as their name denotes) to the emperor's court or pallace^f. The title was twofold, either originally feudall and

^b Act. i. p. 118. edit. Bin. 1618, tom. ii. p^r 1. Δός τὰς κόμητας, εἰσῆλθον οἱ κόμηται.

^c Comites et amici. Apud Gruter. p. 1100. 5.

^d Pasquier Recherches, p. 41.

Estoit invention romaine, p. 110. — Comme s'il eust esté tiré de la suit et compagnie des empereurs.

^e Bracton de corona. lib. iii. c. 3. §. 4. Regalem potestatem in

omnibus.

^f 2 Tit. hon. Seld. p. 639. — Pfaltzgraves des heiligen romischen reicks, hofgraven, comites palatini or palantini.

annext to the name of some territory, with such rights of empire and majesty as other ordinary princes have not (as in the counts palatin of the Rhine); or meerly personall, without the addition of any particular territory proper to him that hath the dignity: of both which forts, are divers testimonies in writers on this subject.

The curopalates were such counts as these, of whome Nicetas saith to Michael, who was afterwards emperor, that he had the chiefest honor among those of the household, for he was curopalates^z: and some learned men suppose, that from the cura palatii, or curopalates in the roman empire, and the very name of comes palatii also then used, the originall and nature of the title of a feudall count palatin is to be deduced.

The most eminent to whom this title is attributed, in England, is the earle of Chester, which earldome W. I. gave to Gherbod a Fleming; and he being detained prisoner in Flanders, W. I. gave it to Hugh Lupus, or de Auranches; and this was as free by the sword, as the king held all England by the crown^h. These earls had their courts of criminall and civill justice, and their barons as their great councell. An old monke expresseth it thus.

By the sword of dignity to hold it with might,
And to call a parlement to his will and fight,
To order his subjects after true justice,
As a praepotent prince and statutes to deviseⁱ.

And to this day the countey palatin of Chester, it being alwayes preserved in the crowne when there is no prince of Wales, and given

^z In vit. Ignat. patriarch. Constant. init.—Τὰ πρῶτα τῶν ἐν τῷ παλατίῳ τιμωμένων, κεροπαλατης γὰρ ἦν.

—Camb. Brit. p. 464.

^h Ordericus Vital. hist. eccles. lib. iv. p. 522. an^o 1070.

ⁱ In vit. sanctae Werburg. Bradf. c. xvi.

to the prince of Wales when he is created, hath had chamberleins who supply the place of chancellor, justices (where my honored father was chiefe justice), a baron of the exchequer, sherifs and other officers proportionable to those of the crowne. Butt in summons he is not named palatinus; butt having such a regall jurisdiction as counts palatin in forein countreyes had, the same name was given him heer, and began about the time of H. 2.

Uppon like reason, as those of Chester, were the antient earles of Pembroke, and the bishops of Durham counts palatin^k. The dutchy of Lancaster is also called a countey palatin, E. 3. having graunted Henry the first duke all liberties belonging to a countey palatin^l, which John of Gaunt likewise injoyed; and these liberties were annexed to it by act of parlement in the beginning of H. 4. and continue though in the hands of the king. Uppon like reason was the name of countey palatin fixed on the bishoprick of Ely, and on Hexamshire, which was under queen Elizabeth united to Northumberland^m.

By the same reason, and liberties, was Hugh Belesme earle of Shrewsbury under W. 2. in some records of E. 1. called a palatin. And from the same reason perhappes did John earle of Warren and Surrey, under E. 3. stile himselfe comes palatiiⁿ. Neither is the title of palatin expressed in any of the patents of such creation, till that of E. 3. to Lawrence lord Hastings, made therby earle palatin of Pembroke^o; the which was also by right of bloud in him.

^k Placit. parl. 18 E. 1. f. 11. and 19 E. 1. f. 25.

^l 25 E. 3. rot. parl. p^t i.

m. 18. Plowden's Comment. f. 215.

^m El. c. xii. 3 H. 8. c. ii.

ⁿ Placita

coron. in hundred. de Stotesden in com. Salop. 20 E. 1.—20 E. 3.

^o 13 E. 3.

rot. pat. m. 12.

Of earls palatin in the empire, somewhat hath bin said; in Germany that of the prince elector palatin, whom they stile pfaltzgrave of the Rhine, is most consonant to the title: and both he and the other princes of severall titles of the Upper Germany, and the antient earles of provinces in the Netherlands, had and have their jura regalia within their territories, and are not differing from the nature of earls palatin.

Not much different from these were the antient earles of Champagne in Fraunce, who had seaven earles under him as his subjects, and wrote themselves comtes palatin: butt that was (saith Pasquier^p) uppon a revolt of the earle Theobald to the emperor, who made him a comte palatin, and he wrote himsele of Champaigne and Brie comte palatin; which continued till the devolution of the countey to the crown. Philip duke of Burgoyne stiles himsele palatin de Burgoyne. Perot also, palatin de Bearne, is mentioned by Froissart. The title of conde palatino is likewise noted to have bin in Spayne, as Gonzalo de Gusman was so called almost 200 years past^q.

In Poland, Littow, Moldavia and those parts, the title of vaiuod is usually translated palatinus; and in their language more perticularly named flau: and of these palatins of the senatorian ranke are reckoned in Poland to be 32^r.

Butt it will be time to come to the more generall title of earle or comes: the which in England, as in other countryes was antiently taken for the like with duke in power, dignity and government;

^p Pasquier Recherches, p. 93. a.—p. 95.

^q Du Chesne en les preuves du liv. 1. l'hist. de Chastillon, p. 2, 14, etc.—Fauin theatr. d'honneur, p. 944.—Vol. iii. c. 6.—Alonso Lopez de Haro Nobil. lib. iv. p. 273.

MS. mihi dat. ab able-gat. Polon. an^o.

and was officary, and afterwards became honorary; and is the most antient title, and very honorable, constantly used, and still continued amongst us. Thus it is held to have begunne with the Normans, and that W. 1. created Alan earle of Brittain, into the earldome of Richmond*. Some mention is in Ingulphus, and others, of the creation of earles before H. 1: and in his time he created his naturall son Robert earle of Gloucester, to please Mobile daughter and heire of Fitzhaman lord of Gloucester, whom the king wooed for his son; and she told the king plainly, in the language of that time by a rhimer whom they called Robert of Gloucester,

Sir hes fede, wel ichot that your hert ope me is

More vor mine heritage then vor my fulse iwis;

and that she would never marry a man without a name. Wherupon the king made his son earle of Gloucester, and he married this heire.

In the time of Maud the empreffe (wherof charters are still extant) she created Geffrey of Mandevile earle of Essex, and Miles earle of Hereford, and Aubrey de Vere earle of Oxford†. King Steven made many earles by his charters, and gave away much of the crowne-lands to them; which H. 2. resumed, and deposed certaine imaginary and false earles made by king Steven, who had wasted the crown lands by giving them to those earles". Aubrey de Vere was by H. 2. created earle of Oxford, and Hugh Bigot earle of Norfolk (or att least confirmed him in that title) and William earle of

* Cambd. Brit. f. 591. 3 W. 1.

† In thesaur. Cotton.—Cambd, ord.

Angl. p. 120.—Gerald. itin. Cambr. lib. i. c. 2.—Cambd. Brit. p. 393.

" Deposuit quosdam imaginarios et pseudo-comites.—MS. abbat. Waverley.

Arundell^w. Many charters of creation are also extant, in the times of k. John, H. 3. and the reigns of the subsequent kings, in our records unto this day; wherby the antiquity, constant use and eminency of this title is sufficiently testified. Nor was it otherwise in the empire, and in other kingdomes of Europe. The emperors had under them their comites of the first, second and third ranke, as is obvious in divers authors, and in the exemplars and severall formes of their creation, and inscriptions in divers monuments^x.

In Fraunce also they had their greater comtes, and lesser comtes. In more auntient time this of comte was held a title promiscuous with that of duke; butt afterwards became inferiour to it, and an honorary title only. And there are divers formes of charters, of the french kings, of the creation of them, some very antient; and the title was of constant continuance and eminency as with us.

The like of the condes of Spaine. And the like title and name of comites is found in Naples, in Poland, Bohemia, Hungary and in the northerne countryes. Germany, England, Sweden, Denmarke give their own names to them, as graves, earles, jaerls, jerls etc. Butt the other nations, from the roman dialect of comites, call them comtes, condes, conties and the like; which causeth a believe, that the Romans gave the precedent of this dignity and title to other nations: and some hold, that the Romans had the nature of them and the first use of them (both of dux and especially of comes) from the Germans, by imitation of what was observed among them, after the Romans were accustomed to their manners. It appears in Tacitus, that divers princes in Germany had their government of

^w Chart. antiq. 5. n. 13. ^x Justin. lib. xii.—Theodos. lib. vi.—Euseb. de vita Constantin. lib. iv. c. 1.—Cassiodore in praefat. ad lib. vi. Variarum.

severall territories assigned them, and held their courts in them; and “had every one att least 100 comites or followers that were counsellors and assistants to them:” and the honor of every of them was according to the multitude and courage of these comites⁷. Indeed the title appears not with the Romans to have bin honorary, or officary, untill after the Germans were knowne to them. Butt (saith Selden⁸) I find not the Romans to have bin such imitators of forein nations; they gave lawes and customes, butt rarely tooke any: and the conjecture may please, butt (saith he) I cannot assent to it. It had bin equally probable if not more, to draw it from the Gaules; for “among them every great man had, according to his worth, his like followers whom they called ambacti and clients,” as Caesar tells us⁹. And the same in substance Tacitus speakes of the Germans; and it is likely that ambacts and comites were the same. And in old Dutch ambachte is translated comitatus; as “in Engelbrechtes ambachte,” in Engelbert’s countey¹⁰. Butt I may be censured for having spent too much time already, on this perticular; the honor and antiquity of the title will aske my pardon.

The next degree of nobles to an earle is the title of viscount; which word is the same that signifies our sheriffe, turned into a dignity, and vice comes is he whome the king appoints “to performe the duety of the earle:” butt in the sence of one of the nobles, he is of the degree next to earles, and above barons. Cambden saith of them, “after earles viscounts doe follow in order; an antient appellation of office, butt a new appellation of dignity not heard of by us untill the time of H. 6. who in parlement created John lord

⁷ Centeni singulis ex plebe comites, consilium simul et autoritas, adsunt, etc.

⁸ 2 Tit. hon. p. 331.

⁹ Caesar de bello gal. lib. vii. Eorum ut quisquis est genere copiisque amplissimus, ita plurimos circa se ambactos clientesque habet.

¹⁰ In Engelberti comitatu.

^c Supplere vicem comitis.

Beaumont viscount Beaumont: and five years after this he had other letters patents (before any other viscount made in England) of a more expresse designation of the place or precedence belonging to his dignity." The title hath bin since given to many, wherof the later examples are in the time of king Charles 2^d.

Cassaneus faith, that this dignity of a viscount is of great antiquity in other realmes; butt Sir Roger Owen will not admit this, unlesse vice comes be taken for a deputed officer, and in the nature of our sherifs^e.

It was usually in France given to a baron, or banneret, or other great gentleman that had three or four baronies, on every of which ten gentlemen att the least were depending^f. The beginning of this dignity was from such as, being att first by delegation made vice comites under the great dukes or counts of the elder ages, revolting from their immediate superiours, and acknowledging the king only, retained yett their former name and dignity of viscounts alwayes. Such a one is the viscount of Turenne: butt there are few of this kind. With some of them also continued the civill jurisdiction in their citties and divisions, being the moyenne justice as in the customes of Amiens, Montreuill and other parts therabouts; and is also stiled "viscountell justice," of the right of viscount^g. And in Flanders and Picardy some lords, that have this kind of jurisdiction, are called therfore "lord vicomtiers^h." Some have also gained criminall jurisdiction. Others have no jurisdiction, butt receive in satisfaction

^d Britan. Ord. Angl.—18 H. 6. rot. pat. p^t ii. m. 21.—23 H. 6. rot. pat. p^t ii. m. 20.—2 Car. 2. rot. pat. p^t v. n. 12 & 14.

^e De gloria mundi, p^t iv. conf.

55.—MS. p^t ii. f. 339.

^f La fallade.

^g Justice vicomtiere. Droit de

vicomte. ^h Seigneurs vicomtiers.

for it the third part of the profits arising out of the exercise of the king's justice in their territories; as the vicomties of Bourges, Cologne, Villemenart etc. A second sort of viscounts are such as hold of the king, as of some countey or dutchy united to the crowne; of which the most are. And the third sort is of those which held of counties not in the king's hand; and their being thus mediate, or immediate to the crowne, lessens or increases their dignity. Our king H. 6. as king of France, gave the vicecomtie of Beaumont to John whom he had before created viscount Beaumont. This title also of viscounts or vizcondos, in some number, occurs in the dignities of Spayne, and from the same originall as in France¹.

In Italy, Germany and the northerne countryes, we find not this perticular title of dignity of viscount. Butt the Romans had their deputies of the counts, which might sometimes beare the name of vicecomes^k.

Our historian Ingulphus hath the worde vice dominus, and our sherifs are sometimes antiently called vice domini; butt in France it is become a title of dignity. And as viscounts had their originall from being subordinate to the great dukes or counts of France; so the vidames, from being so to bishops¹: and where the vidame resided, or had his fief, after such time as such possession or territory as he had became to be settled in him either by gift or permission, as a fief, his denomination was from the bishopricke only; as the vidames of Rhemes, Amiens, Chartres, Mans etc.

The last in ranke, though not in time, of the degrees of nobles is that of baron, an antient and honourable dignity with us, and in

¹ Alonso Lopez de Haro, Nobil. gen. lib. iv. p. 273.

^k Vicarii comitum.

¹ 5 Greg. tit. 9, epist. 66. et distinct. lxxxix. c. 2. — Synod. Remens. I. can.

24. 2.

other countryes. The originall signification of the word baron, which none can precede, is for a man. So it is sayd sometimes with us the king and his barons, for the king and his men; the like occurs, in the Lumbard lawes, our barons for the king's men^m. Selden holds cleerly the derivation of this name baron from bar, barne or berneⁿ; as in some of the northerne languages, which disperst themselves into Europe uppon the incurfions of the Gothes and Vandales, it signified a man, and in that sence it denotes the sex as vir doth: Philoxenus interprets it so; and the french and latin glossaries^o; and the Picart french, as our law french, have baron and femme for the same with man and wife; and in the lawes both of the Salians, Alemans and Ripuarians, baro or barus and foemina occurre for a man and woman^p. And all or the most part of the tounes of Europe had something from those northerne languages: and in this perticular we see the word baron almost in every state in Europe. I passe by that derivation of baron out of Perseus, Cicero, and Hirtius, for a stupid or blockish fellow, and the servant of a soldier; it being impertinent to my purpose. Butt after the significations of it for a man, and for a husband, I come to the next which is for a son: so the hebrew word bar is a son^q, the dutch worde bar is the same; and our northerne people and the Scots call children all of them barnes, as the faxon word berne is for children, and beren to bring forth^r. The French also, in divers provinces, doe call the eldest son of the lord of the towne a baron. We have an english saying, a bold baron. And Isidore notes barones from a greeke name signifying valiant in labours^s; and the same is in an old ara-

^m Longobard. lib. i. tit. 13. Leg. unio. Barones nostri.

ⁿ 2 Tit. hon.

p. 428. ^o Baro, *ἀνὴρ*, ber, baro, vir.

^p Tit. 33. de via lacina. tit.

76 et 95. tit. 58. §. 12.

^q בַּר

^r Bæpn pro sobole. bæpen parere.

^s Orig. lib. ix. c. De civibus. Barones graeco nomine, quod sint fortes in laboribus.

bick latin glossary. And our Bracton hath his derivation of baro as it were *robur belli*, the strength of warre¹; and the *ortus vocab. calles baro* a noble and stout bold man, as *vir* among the Latins from *vi*, force and strength. And bargines, with Isidore, signifies valiant, stout in war; as with the Spanyards *baragan* is for a strong bold man, and *baragana* for the like woman. So are the greeke words *baros*, etc. for soldiers. And the emperor's guards were called *barones*; and their company was called *barangia*², as the state of the barons with us is called *baronagium*, and *barnagium*. Spelman thinkes those were English, and such as were then billmen. And in the saxon grammer, *bari* or *barri* are acknowledged to be principal soldiers³.

We reade also of the word *baron* applyed to those under earles and peerres, barons of barons; as of the earle of Chester, of the abbot of Ramsey, etc⁴. So the earles in Germany, France and Italy, had their barons holding of them, and the earls of Flanders had the same⁵. We find also with us the barons of countyes, that is freeholders, barons of the cinque ports, barons of London, of Yorke, Chester, Warwick, Feversham and other places, wherof there will be occasion to discourse perticularly heerafter; as also of the lesser barons and lords of mannours, att this day their courts being called "courts barons⁶." Butt I leave them for another argument. To come neerer to our purpose, Cicero in some places makes use of the word *baro* for an eminent person; "as with the patron, and the rest of the barons⁷." And Insulanus saith, that the word "*baron* signifies emi-

¹ Lib. i. c. 8. *Barones id est robur belli.*

² Vestib. lib. viii. *Daniae hist.*

³ Aimoinus, lib. v. c. 11.

⁴ patronem et reliquos barones.

⁵ *Βαρος, μαγιστρος.—Βαρανγία.—*

⁶ Spelman. glossar. hoc verbo *Baron.*

⁷ Curia baronis.

⁸ Ad Attic. lib. v. Apud

nency, and a certaine greatenes of power^b," agreeable with the acceptation of the word baron as a nobleman. And as in the dutch and scandian tounge baron signified a man, and barinotoug signifies an expedition of men; so it was afterwards applyed unto the more eminent men: "such as were of principall estimation and nobility, are saluted barons." And from thence, in the lawes of Norway, baron, or barun is rendred in the danish version herremund, and in swedish att this day hermun, one who is discended of an illustrious family; and in the scandian tounge such a one was called herse^c. He who by gallant actions approved himselfe a man was, in those countryes, honored with the title of baron, which also in the gothique language signifies a famous man, as is noted by Besoldus: "and he who for his gallant actions, was adorned by the king with a peculiar immunity and dignity, for honor's sake, was saluted a free lord or baron^d." And in France the word ber, from whence they fetch the word baron and berun, is used to signify a noble, stout, brave, or more literally a manly lord, a good character of a true baron^e.

Some, especially learned english antiquaries hold, that the name Baron came into England with the Normans, or att least with Edward the confessor, who had drunke in the norman ayre and manners^f. Butt Sir Roger Owen doth not subscribe to this opinion, butt allowes the name place heere in the Saxons time^g, as in a charter of one of

^b Barones eminentiam et maiorem aliquam potestatem significare. ^c Leg. ripuar. tit. lviii. §. 12.—Leg. Norveg. c. lvii. & xlvi. Landzlete balkn. —Viros eminentiores conspectiores, existimationis ac nobilitatis praeicipuae, barones salutati sunt.—MS. c. v. Qui ex illustri familia natus.—Chron. Norveg. p. 151. ^d Besoldus, c. iv. §. 16. Peculiari immunitate et dignitate a rege ornatus, honoris causa, liber dominus seu baro salutabatur. ^e Noble ber & puissant messire Henry de Vergie du Chezne, lib. iv. de l'hist. de la maison de Vergy, p. 240. ^f Spelman. glossar. verbo Baro.—Seld. 2 Tit. hon. p. 688. ^g MS. Sir Rog. Owen, p. 349.

the kings of Mercia, he frees the church of Peterburgh from the exactions of his earles, barons and sherifs. And by the privileges of the cinque ports it appears they were called barons in the confessor's time, in whose edicts there is direct mention of barons. In the MS. of Ely, before the conquest, to a sale of lands very many barons are witnesses. And in domesday the word barones is often mentioned. As to the expression of barones in Cnute's lawes, in Henry Huntingdon of Edward the elder's time, and in the booke of Ramfey, the use of it is by some held rather to be by the fancy of the writer in Latin afterwards, than as a knowne name of the Saxons time who called those thaines, as they did in Scotland, who were afterwards with us and them called barons.

In the feuds the name of baron is not found, butt great valuasors, captains and procures^h. In Bohemia as antient as the emperor H. 4. barons were createdⁱ. In France they are likewise very antient. With us none denyes them place from the time of W. 1. and that the name of baron succeeded that of king's thaine^k: and from that time, to our present age, the name of baron hath bin a title and degree of honor and nobility of the english nation. These were called the greater barons, and were by a threefold right: 1. By tenure, 2. By writ, 3. By patent; of all which there will be occasion to speake perticularly in other places. The chiefe of the fathers and heads of families among the Hebrewes, especially such as they called ish, the sons of great men (as hath bin noted) have some resemblance^l.

In the german empire those whom they name by the title of herren, etc. are by them translated in Latin barones. Butt in Low Dutch the word baron is sometimes used, and perticularly in the

^h Cassiblanco. proem. ad rubric. de Baron. §. v.
hem. c. xxii.

^k Cynninge Dane.

ⁱ Æn. Sylvius de stat. Bohem. c. xxii.
^l Filii nobilis. שׂוֹנֵי

subscriptions of the decrees of their councells, "by the assent or authority of the graves and barons^m."

The Graecians, as hath bin noted, have the word baron and barony; expressing beta by mp, as is usuall with themⁿ. In Italy they have the word baron for a dignity of nobility^o. In Naples it is among their titolati, and is comprehensive of the severall rankes of their nobility. The French have the title of barons, ranked after viscounts and vidames, and before chastellaines.

The Spanyards have the word varon, for one that is notable and famous: and Gregorio Lopez makes their dignity of ricos hombres the same with barons^p. And in Catalauna and Valencia those are called barons, who possesse the inheritance of seignories with large jurisdiction.

The title banneret hath sometimes in our records bin taken for the dignity of a temporall lord in parlement; as in the case of Gominez, bannerets are reckoned among the parliamentary lords. And in the statute which commaunds the appearance of members of parlements, baronets are reckoned before the knights of the shire; and so in some of our historians, supposed to be mistaken or miswritten for bannerets; and fundry authorities are in our bookes of law, proving bannerets to have voice in parlement as lords^q.

The german banner-heer, for lord standard-bearer, is the like as with us banneret. In Fraunce they had also the title banrent, and

^m Freyen, Freyherren, Edlenherren, Herren, Edlen.—Baron zu Liesfelt, etc.—Pourmeistr. dict. Los. §. 35. Von der graven und herrn wegen.

ⁿ Μπαρωνία.

^o 2 Tit. hon. Seld. p. 427.

^p Ad lib. x. tit. 25. De los

vassallos, partic. 4.

^q 1 R. 2. rot. parl. m. 6.—Stat. 2. 5 R. 2. c. iv.—Wal-

singham, p. 359.—12 E. 3. f. 78. tit. Challenge 119.—5 R. 2. rot. claus. dorf. m. 32.

banneret, next of degree if not equall to a baron. I read not of this title elsewhere, nor is that of marquisse or viscount in the northerne countryes; butt in Sweden the title of baron is next to earle, and of the like quality and dignity as with us in England. Likewise in Denmarke, Poland and those parts, they use the word baron for a title of their nobility.

In the lawes of Hungary barones are mentioned for the great men and peers of the kingdome: and in Bohemia they have the word barones, among their chiefe nobility. Butt some perhappes, of a more levelling temper, will censure me to have spent already too much time in titles.

^r Stephen Werbeucz. pⁱ i. tit. 2.—An^o 1348. edit. a Freber^o.

C H A P. XXXIII

Of our said kingdome.

THE great men and peeres of this kingdome, the nobles of England, have bin before in part the subjects of this treatise. I shall heere speake somewhat of them in a more restrictive sence and application to this kingdome, as they are great men and nobles heere, whom we commonly call the peeres of England^a, and lords of the parlement; generall appellations more peculiar with us, especially that of lords, than in other kingdomes.

The occurrence of this title of peeres, with reference to the lords of parlement, is frequent both in our stories and lawes; and the right of peerage is thence mentioned in the rolles of parlement^b. And as dukes, marquesses, earles, viscounts and barons are peeres, and by that name specially knowne^c; in like sorte knights, esquires, gentlemen and yeomen (being freemen and denizens) of all sorts, in our lawe, are as of the same ranke for the title of paritie, the true English wherof is equality: peeres are equalls. In the great charter where no freeman is to be imprisoned, disseised, outlawed, banished or otherwise made subject to any judgement, “unlesse by the lawfull judgement of his peeres,” etc^d. that hath bin alwayes interpreted, that what lay baron soever be arraigned for a capitall crime, he shall be tryed by barons; and under that name are included all above barons; butt he shall not be tryed in those cases

^a Pares regni.^b Math. Paris, an^o 1208, p. 357.—Magn. chart. c. xiv.—15 E. 3. c. ii.—11 R. 2. rot. pat. p^t i. m. 2. art. 34.—P. 3. E. 3. coram rege. rot. 9.—

22 E. 3. f. 9.

parium suorum.

^c 1 Tit. hon. Seld. p. 344.^d Nisi per legale iudicium

by any of lesse nobility, they not being his peeres. Butt any inferior man, in like criminall causes, hath his triall indifferently by knights, esquires, gentlemen or yeomen, which in law are taken for his peeres. So in the arraignment of Sir Nicholas Throckmorton, under queen Mary, uppon the words of the statute of E. 3. of treason "be attainted by men of their condition;" gentlemen, esquires and yeomen were held men of his condition, though he were a knight^e.

The reason of that double parity in England, that all barons and dignities above them are peers of the realme, and all others under them are peeres also among themselves, is imagined to proceed from the feudall customes "of peeres of the court, of the house of the palace^f." All sorts of men in the kingdome have their peeres, only the king "hath no peer in his kingdome^g," being the head of all; so it is sayd of God, who is like unto thee? The vulgar Latin is, "who is thy peere^h?" Yett the kingly prophet complaines of one of his peeres: butt it was thou, a man "mine equal, my guide," etcⁱ. Some princes have so farre honored some of their subjects, that they have made them their peeres, and given to them the title of father, patres and patricii, from whence some would derive the word peeres. As when Joseph came into his deserved favour with the king of Ægypt, and he made him to ride in the second chariot which he had, and they cryed before him, bow the knee^k: the word there abrech is interpreted father of the tender king, or tender father of the king. So Haman was called, by the king, his father^l. The

^e Holinshed.—25 E. 3. Soit atteint per gentes de leur condition.
curtis, domus palatii.

^g Bracton. Parem non habet in regno suo.

^h Psal. lxxi. 19. Quis par tibi?

ⁱ Psal. lv. 13. Par meus, dux meus.

^k Gen. xli. 43.

^l אֲבִיךָ Chaldee of Onkelos, & Jonathan. Hierosolim. Targum. Esth.

guift “ of the high patrician honour ” was by Zeno the emperor preferred before all other ; and in the guift of it to Importunus Theodorique, it is called the office of full dignity. Justinian faves of them, they are honoured by us in the place of a father ; when a patricius is called “ father of the state ^m,” as all true peeres ought to be. And of this sort some hold to have bin the persian companions to the king in honor ⁿ.

Such were “ the twelve peeres of France^o,” and the comites and amici of the emperours. These peeres of France are by a speciall honor of state so called, and were antiently fixe clerics and fixe laics, all dukes and earles ; afterwards some of them devolving to the crown, other pairies were erected, and the number of them not certaine. Their originall institution from our british king Arthur, or from Charles the great, is refuted by Du Haillan, and more probably fetched from their king Lewis the younger ^p. And although all the nobility of France, as with us, are in a generall sence comprehended under the name of peeres, yett these kind of peeres, such as the douze pairs were, are honorary, and in dignity above the rest of the nobles of France ; yett they have also the word pairs in use for persons of a meaner and equall condition, and probably deduced from the same originall as with us. Wheruppon Du Haillan notes, that the fiefs becomming hereditary and patrimoniall, according to the usage of Lombardy, in each of them were established a certain number of vassalls called peers, or freemen ^q of the fee or court, charged to hold att sett dayes the court of the lord, with him to

^m C. de Coss. lib. iii. & c. de Decur. lib. lxvi. Sublimis patriciatus honor.—Cassiodor. Var. iii. ep. 5.—Authent. lxxxix. in praef. Πατήρ τῆς Κοινῆς.

Cyropaed. ii. Ὁμότιμοι.

^o Les douze compagnons.

^p De l'estat. des

affaires de France, p. 225, 226.—An^o 1179.

^q P. 225, 6.—Pairs ou francs

hommes.

judge feudall causes and others there depending, to be present att new investitures ; and by reason therof, had great praerogative and nobility. And those vassalls judges were called peers, bicause they had equall jurisdiction.

The judges of our exchequer in England are called barons, and probably were so really ; and they and the king's justices, when the great charter was graunted, were held for peeres to the other nobles. Wheruppon is that of Bracton, " earles and barons are not to be amerced butt by their peers, and this by the barons of the exchequer, or before the king himselfe : " that is in the king's bench, where the earle of Northumberland was amerced by the judges as his peeres'. Butt the proper knowne sence of the peers of England, or peers of the realme att this day, is the lords of parlement ; and therefore the lords house in parlement is called the house of peers.

Another appellation, peculiar to the nobles of this kingdome, is the title of lord, or my lord : a word of our owne idiome, yett not altogether improbable to have bin fetched from the northerne countreyes. In Gothland they have an officer of justice, for government of the people, whom they call lagevard, and laverd, and loverd according to their severall pronunciations. Lage in their language, as in the old Saxon, signifies lawe ; and so we find it in our antient stories, where they speake of danelega the lawe of the Danes, merchenlage the law of Mercia, west faxon lage, and the like ; and vard and verd in their language is the same as with us ward or guard : so lagevard, laverd, and loverd signifies with them one who is a warden, keeper or judge of the lawe.

19 E. 4. f. 9. — 38 E. 3. f. 31. — 21 E. 4. f. 77. — Br. amerciament. 47. —
1 H. 6. f. 7.

judge

The

The same word loverd, expressing such a one as we now call lord, is found in divers of our antient writers, as Bede hath it*. And it is in that metricall translation of the first psalme, fairely written about the time of E. 2. transcribed out of the whole psalter, a like wherof is in Bodley's library in Oxford; and the character of it seemes to be about that time of E. 2. it beginns thus,

Heely beerne that nought is gan
 In the red of wicked man,
 And in strete of sinful nought he stode;
 of scorne ungode:
 Butt in the lagh of loverd his will be ai,
 And his lagh thinke he night and day, etc*.

Heere both the words, lagh for lawe and loverd for lord, are cleerly expressed: and the psalme concludes thus.

For loverd of right wise not the way,
 And gate of wick forworth fal ay^u.

The like translation pertinent to this purpose is in the fifteenth psalme, which in the old rithme runns thus.

* Hist. Angl. p. 25.

Of him comðe goðe Brurgh
 Ðat þar ðe þurpe man
 Ðat louenð þar in Engelonð,
 Arc ich eu telle kan.

* Psal. i. 1, 2. Blessed is the man that walketh not in the counsell of the ungodly, nor standeth in the way of sinners, nor sitteth in the seate of the scornfull. Butt his delight is in the law of the Lord, and in that law doth he meditate day and night. For the Lord knoweth the way of the righteous; and the way of the ungodly shall perish.

Louerd who in thy teld who fal wun,
 In thy heli hille or who rest mun?
 He that incomes wemles,
 And ever wirkes right wifenes.

The like expreffions are found in the old english rithmes by Robert of Gloucester, where he fetts forth the difcource between Maud daughter and heir to Fitzhaimon, and king H. I. touching her marryage with his bafe fon Robert afterwards earle of Gloucester, The maide fayes to the king.

So vair eritage as iche abbe, it were me great shame
 Vor to abbe an louerd, butt he adde an to name.

Then ſhe tells the king her father's name; and ſhe defired no huſband unleſſe he had two names, which the bafe fon of the king had not. The king then told her that his fon's name ſhould be Fitz-Roy, which the maid ſaid was a fayre name; butt asked the king what the name of Robert's fon ſhould be? to which he replied,

The king underſtode, that the maid ne fede no outrage,
 And that Glouceſter was chiefe of ire heritage.
 Damaiſele, he fede, tho' thy louerd ſſal have a name,
 Vor him and vor his heirs, vair without blame.

And told her, that Robert ſhould be earle of Glouceſter, which liked her; and it concludes,

Lord who ſhall abide in thy tabernacle, who ſhall dwell in thy hill? He that walketh uprightly, and worketh righteouſneſs.

This

This was endleve hundred yer ; and in the ninth yer, right
After that, or louerd was in his moder a hight.

I have mentioned these perticulars the rather for the pleasantnes
of the story ; and to manifest the frequent old use of the word louerd
for the same as we att this day expresse by the word lord, easily by
pronunciation contracted from louerd into lord. And the northerne
originall of it may appear by what is before noted, and by the use of
the word lourd little different from louerd, among the Danes, for
one in power and commaund, as is noted by Lambard *. In the
reigns of Cnute, Harold, and Hardi Cnute, such was the infamous
oppression, slavery and thraldome of the english nation, that every
Dane was for feare called lourdane ; and it became (after their ex-
pulsion) a name of despight and reproache for their sakes, lourd
and Dane being made one word. Butt the name lord by itselſe al-
wayes signified a person of power and honor, and one of our english
nobles.

Verstegan would have the word lord to come from the saxon
word laford †, which for some aspiration in the pronouncing they
wrote hlaford ; which is not much dissonant from lagevord, and
loverd, and by contraction, receiving like abridgement as other our
antient appellations, is in one syllable become lord. The etimology
he bringeth from hlaſ which signifies bread, though att this day we
call the fashion of making it only a loafe ; and so hlaford was one
that did afford or give bread to others, that kept good hospitality,
and relieved the poore, an excellent property of a lord ; and he notes,
that such as were wealthy were chiefly renowned, especially in these
northerne regions, for their good housekeeping.

* Perambulation of Kent, f. 111, 112.

† Hlaforþ.

Selden is not satisfied with this derivation of *Verstegan*; but fetcheth the word lord from *lars*, or *lartes*, an old tuscan word neere our present pronounciation of lord or lordes, and signifying the same for which we use lord^z. He condemnes that of *alodium*, and *allodius*, to give the origination of lords; but agrees that in our antient Saxon it was written *hlaford*, and became afterwards to be pronounced *laverd* and *loverd* as is before noted; and in Chaucer's time frequently written lord and lordship, and lordings as in this place:

For well ye know a lord, in his household,
Hath not every vessell all of gold^a.

And the like is in many other places of this and severall other antient english writers. And in our time, the word my lord is become a new-coyned word by forein authors; as in French they say a mylord or milorte of England, and often use the words milords and milortes for our english nobles. Soe in the epistles of Anthony Perez to the late earle of Essex; and in Rablais is said, "so many milords of England." And in Latin they say "one of the degree of milord in England^b."

In Scotland there is a difference between their lords or parliamentary barons, and their lairds or barons only by name: for those freeholders, not parliamentary, are no longer honorary or barons in the best degree, but meerly as possessors of a smalle territory;

^z Tit. hon. p^ti. p. 59, 61.
Bathe's tale, etc.

^a The clerke of Oxford's tale. The wife of
^b Pasquier Recherches, lib. ii. p. 502 & 599.—Un milort
d'Engleterre.—Rablais, lib. iv. c. 33.—P. Mathieu hist. lib. iv.—Tant de milords, etc.
Ex ordine milordico Angliae.

and are (being lairds) below knights, and with them reckoned as our commons which consist in freeholders. Butt those other which are part of the lords temporall, and have the title of lords as with us, are in proportion with our lords in England.

Both with them, and us, the title or appellation of my lord is given to the king himselfe; as, my lord the king: and the king of England wrote himselfe lord of Ireland, when he had all regall power and rights there, as hath bin noted. And this is agreeable to the use of the word lartes or lars, before remembred, which in the tuscan language signifies a prince, and is so used by Cicero. And lar doth yett remaine a word for a chiefe house, about Bayeux in France^c.

We say also, my lord the prince; and the king's vice roys in Ireland are called my lord lieutenant, my lord deputy, my lords justices, etc. So the lord guardian, the lagevard of England. This title was also given to all bishops, and to abbots, priors and the graund master etc. who were summoned to parlement.

We also give the title of my lord to divers temporall officers, as to the chancellor, treasurer, high constable, generall, marshall, admirall, privy seale, steward, chamberlein, warden and others; and, to the two chiefe justices and chiefe baron, to every judge in his circuite, and to the majors of London and Yorke. The Scotts (not without cause) say my lord colonell; and every tenant sayes, my landlord.

^c Philip. ix.—Jof. Scaliger ad Propert. iv.

Butt the title of lord, as it is inherent to the person and by birthright, is only due to the sons of dukes and marquesses, and the eldest son of an earle, by courtesy; and by right, to all those who are members of the lords house in parlement: which is explained by that act of H. 6^d. where speaking of such as make default of appearance uppon proclamation, “if such a person be of the degree of a lord (as a duke, marquesse, earle, viscount, or baron) he shall forfeit,” etc. Which explaines those degrees of peeres to be comprehended under the name of lord, and to be signified by that title, and so they must be named in legall proceedings: which extends not to the sons of noblemen before mentioned, nor to englishmen who are lords by some title of Scotland or Ireland, or of a forein countrey; bicause they have heere the title of lord by courtesy only.

I shall conclude this subject with a few cautions, and precedents not improper for the remembrance and imitation of nobles, who may be pleased to thinke uppon that old and true saying, “that virtue is the only true nobility;” that “nobility of blood only is butt a meane thing in comparison of virtue.” “We are all borne alike, and are distinguished only by virtue.” Butt that is a better distinction of the Bereans, of whom the apostle saith, that “these were more noble than those of Theffalonica;” and gives the reason, in that “they received the word with all readines of mind, and searched the scriptures dayly whether those things were so or no^t.” The nobles of Berea did not waste their pretious time in effeminate comptnes, vaine sports or sinfull debaucheries; like those who

^d 31 H. 6. stat. c. ii.

^e Juvenal. satyr. viii. Nobilitas sola est ac unica virtus. Nobilitas sanguinis nobilitas stercoreis. — Minutius Foelix Octav. p. 123.

Omnes pari sorte nascimur, sola virtute distinguimur.

^f Acts xvii. 11.

understand not their owne interest. And of such the prophet saith, "man that is in honor, and understandeth not, is like the beasts that perish." And his son saith of them, "that honor is not seemly for a foole." Butt he counsellis them "to exalt wisdom, and she shall promote thee, she shall bring thee to honor^e." They must doe as the noble Beroeans did (butt I feare too few doe) search the scriptures daily, the greatest pleasure the best imployment! and there they shall find, and it will prove true, that "he that followeth after righteousness, (not he that followeth after luxury and vanity) findeth life, righteousness and honor; and that by humility and the feare of the Lord, (not by pride and prophanenes) are riches, and honor, and life^b." That God saith, "them that honor me, I will honor. That a man of God (not of this world) is an honorable man. That he that waiteth on his master (not on his owne pleasures) shall be honoredⁱ." With many of the like instructions for nobles, from the word of trueth, which declare the true interest of nobility to be, in the first place, piety, humility, virtue and all manner of honorable and noble actions which create a man noble. They are excellently comprehended in the character of Job, the eminent patterne of true nobility, which deserves the study and imitation of every one who is, or desires to be invested with the title of a nobleman. It is thus sett forth. "When the eare heard me, then it blessed me; and when the eye saw me, it gave wittnes to me." The reason of this great regard of this great nobleman Job, followes; "because I delivered the poore that cryed, and the fatherlesse, and him that had none to helpe him; that was ready to perish; (they are right noble actions) and therupon (saith he) his blessing came uppon me; and I caused the

^e Psal. xlix. 20.—Prov. xxvi. 1.—Prov. iv. 8.
ⁱ 1 Sam. ii. 30.—1 Sam. ix. 6.—Prov. xxvii. 18.

^b Prov. xxi. 21.—Prov.

widdowe's heart to sing for joy." Greater pleasure to a noble heart than the enriching of taverners, fiddlers or taylors, in prodigality, can be to the loosest liver. He proceeds in his honorable actions. "I putt on righteousness (an habit farre exceeding silver or gold lace or any gaitie of rayment) and it clothed me. My judgement (not his imbroydered coate) was as a robe and a diademe. (The most splendid ornaments of a nobleman!) I was eyes to the blind, and feet was I to the lame. (Not a good customer to the taverne or playhouse) I was a father to the poore; and the cause which I knew not I searched out." He was no father of illegitimate children, butt of the poore; he spent not his time in gaming or riot, butt in searching out the intricacies of causes, the property of a good judge, the quality of our nobles who are borne judges! Then he shewes his courage. "I brake the jawes of the wicked (not the head of a lacquey or vintner's boy) and pluckt the spoyle out of his teeth." More honorable than to pluck a favour from a mistress^k!

Having thus demeaned himselfe as a true nobleman ought to doe; the esteeme which was theruppon had of him, and the countenance and honor due unto him, appear in the rest of this excellent chapter.

"Then I said, I shall dye in my nest, I shall multiply my dayes as the sand." A long life and naturall domestick death is a blessing; butt to be cutt off in a fray, or to shorten ones dayes by a vitious disease is a great punishment. "My roote was spread out by the waters, and the dew lay all night on my braunch." Blef-

Job xxix. 11.—Ver. 12.—Ver. 13.—Ver. 14.—Ver. 15.

fings of prosperity, and quiet under his owne vine and figg tree; much beyond travayling to foreign regions, and returning with a change of religion or good manners! "My glory was fresh in me, and my bow was renewed in my hand." His reputation was untainted, and his body and mind uncorrupted. "Unto me men gave eare; and waited, and kept silence att my counsell." They gave attention to his counsell, not to prophane jests or scurrilous stories. "After my words they spake not againe, and my speech dropped uppon them." Such weight was in his words, that none did reply to them: no lightnes or babling, butt speech dropping uppon them; and so pleasing to every one, that "they waited for me (saith he) as for the raine; and they opened their mouth wide, as for the latter raine." They longed to hear him speak, from whom they learned so much instruction; whose words were not empty, butt refreshing as the latter raine. "I laughed on them, and they believed it not; and the light of my countenance they cast not downe." They were not captious; not apt to take exceptions att his mirth, whose jests were not bitter nor reprochfull: yett he was cheerfull with them and laughed on them; and they did not answear him in sharpnes, nor disesteem him, nor cast downe the light of his countenance. He concludes, "I chose out their way (he was a duke and leader among them) and fate as chiefe (so shall every one that demeans himselfe as he did) and dwelt as a king in the army." In war as well as in peace he was principall, and as a king; he was crowned with this blessing, that he was as one that comforteth the mourners; than which nothing is more joyfull to a generous and noble spirit¹!

Heere is the true character, and the certaine reward of a right noble man: that great respect which was given to Job he deserved.

¹ Job xxix. 18.—Ver. 19.—Ver. 20.—Ver. 21.—Ver. 22.—Ver. 23.—Ver. 24.—Ver. 25.

by his righteous, pious and couragious actions; and it is an excellent caution and exhortation to all nobles, to do as this noble man Job did; and then they will assuredly gaine the like honor and esteeme of all good men, which will be the strongest prop and surest support of themselves, and their dignities. Then will they be truly noble and illustrious, shining lights to others, glorious inhabitants, and pillars of their countrey!

The power in councells and judicature, the priviledges and immunities of the nobles of this kingdome, are reserved for the discourse of other places.

C H A P. XXXIV

We commaund you.

THE latin word heere used, “*praecipimus*,” doth properly signify a commaund, and in that sence it is used by Salust; “my father commaunded me^a :” and the commaunds of a father were not with them accounted triviall. In some writs, instead of the word *praecipimus*, is used the word *mandamus*, of the same sence; and both doe signify, in a writ, the king’s expresse commaund.

A writ is defined to be a formal letter or epistle of the king’s, directed to any judge, officer, minister or other subject, commaunding, or authorising any thing conteined in the same letter to be done^b. And so this writ commaundeth the high sherife as followeth. And the high sherife is the proper officer for executing the king’s commaunds: wheruppon Coke saith, that the sheriffe hath a threefold custody committed to him. 1. Of the life of justice^c; bicause no suit begins, and no proces is served butt by the sherife, uppon commaund from the king by his writ; and all writs or precepts, so are they called, did from the beginning issue from the mouth or hands of the king^d. And the sherife also, by the king’s like commaund, is to returne indifferent juries for the tryall of mens lives, liberties, lands, goods, etc. 2. The sherife hath the custody of the life of the law^e; he is after long suits, by like command of the king, to make execution, which is the fruit and life of the law. 3. The sherife hath the custody of the life of the commonwealth^f; being

^a In Jugurth. *Pater meus mihi praecepit.*
^c on Litt. f. 168. *Vitae justitiae.*
^e *Vitae legis.*

ginals, f. 1.

p. 9.

^e *Vitae legis.*

^f *Vitae reipublicae.*

^b Theloet. Digest. des Lettres originals, f. 1.

^d MS. Sir Rog. Owen,

principall conservator of the peace within the countey, which is the life of the commonwealth^g.

Surely the sherife is a great officer, as before hath bin in part noted; and he is called vicecomes, bicause he is, instead of the earle of that countey, who in antient time had the government of the countey under the king: as the mirroir of justices saith^h, that it appeareth by the ordinance of antient kings, before the conquest, that the earles of the counties had the custody or gard of the counties; and when the earles left it, then was the custody of them committed to viscounts who therfore are called vicecomites "bicause they supply the office of the earleⁱ." One calls this office "a judiciary dignity;" another saith it is an office of dignity, which is agreed by all^k. And it appears by the lawes of Edward the confessor, that a countey in the time of the Romans was called a consulatus, and the officers whom we now terme vicecomites, they called viceconsules: wherby appears, that the like officer as our sheriffe was in the Romans time heere, who was a minister to the king's courts of law and justice, and to execute his legall commaunds; and had then a countey court called the consulary court, wherin it is sayd, he did supply the consular office in lawe and justice^l.

Writs are described by that learned knight Spelman, to be membranes with the king's seale affixed to them, wherby the prince with an imperatorian brevity commaunds or prohibites any thing^m. There is much difference between a verball personall commaund of the king, and his legall commaund under the great seale: by the

^g Vita reipublicae pax.

^h C. i. §. 3.

ⁱ Ockham. c. Quid centur.

Porro vicecomes dicitur, quod vicem comitis suppleat.

^k Marculphus. Judiciaria

dignitas.—Lamb. f. 129. 12.

^l Curia consulatus ipsius vices supplebat, in jure

et in foro.

^m Glossarium. verb. Breve.

former no man's life or freehold is to be taken away; by the latter, his commaunds extend to life, liberty and property, according to lawe, and the judgements of the king's courts of justice. And this distinction appears fully in the bookes of lawe, and was acknowledged by king James in that passage related of his passion (as who is free from it) when being disturbed and affronted by a rude fellow, he in chollar bid, "take him away and hang him;" butt presently returning to his own temper and good nature, he inquired for the man; and some of his merry servants telling, that the fellow was hanged as his majesty commaunded: the king replied, that his verball commaunds were not to be extended to his subjects lives; and was well pleased, that they had not executed that commaund. Which would not have excused the fact, according to that axiome, to commit an evill action, by principall commaund, doth not sometimes excuse itⁿ: and what is in itselfe wicked and dishonest can be defended or confirmed by no praetext, by no superiour commaund att no time. Therefore the instance is given in the roman officer, who att the commaund of Julian the emperor burnt the church of Berinth, the metropolis of Phoenicia: yett notwithstanding this excuse, he was compelled by Jovinian to rebuild the church att his own charge, and hardly escaped death for his former fact, though in execution of the emperor's commaund°. Butt as king James said truely, where the king commaunds by his writ under the great seale, those commaunds are not to be disobeyed, nor disputed by the proper officer (as heer) to whom they are directed. Therefore Justinian asserts, that he commits the injury, who commaunds it to be done; and he is in no fault who is bound to obey^p, as the sheriffe by this writ is obliged

ⁿ Theodorét. Hist. eccles. lib. iv. c. 22 — Nicephor. lib. xi. c. 28. Mandato principali facinus commississe aliquando non excusat.

^o Herodian. Decret. p. 295. Magnus comes largitionum.

^p F. 278. Is damnum dat qui jubet dare, ejus vero nulla culpa est, cui parere necesse sit.

in the duety of his place. And it is adjudged in our law, that if an illegall writ come to a sherife, he is not to examine or judge of the legality or illegality of it, being himselfe butt a ministeriall officer for the execution of the king's commaunds by writ; and the same being under the great seale of England is a sufficient warrant, and obligeth him to the execution of it: nor is he lyable to be questioned for the same, although the writ be not according to lawe, wherof he is not the judge.

As to the choyce of members of parlement, he is the only proper officer. And so he is for the choyce of coroner, verderors and regardors, uppon a writ commaunding him therunto. Though in some private causes where himselfe may be concerned, proces is to be directed to the coroner, commaunding him to doe what otherwise the sherife should have done.

C H A P. XXXV

Firmly injoyning.

THIS is a seconding or inforcing of the king's commaund, he doth "praecipere," and firmly injoyne: his command must not be neglected nor disputed by his ministers, when it is thus solemne and legall by writ under the great seale. It must be firme, not to be changed, fixt and constant. It is not for kings and their ministry to waver, and be inconstant in their commaunds; butt firme, stable and immoveable, as the latine word in the writ "firmiter" doth beare. And such a constancy and stability produceth the better effect in all proceedings; according to that of Plautus. "Truely the more firmly any man doth manage his affayres, so it proceedes accordingly^a." Thus the stile of our kings in their commaunds is full of prudence and majesty, voyd of lightnes and inconstancy: it is agreeable to that advice of Salust, "Consult before you begin any great buisnes; and when you have consulted, proceed firmly and maturely to the performance of it^b." The same is sayd in fewer words by Seneca, "Be long in advising, firm and speedy in acting^c." Charron notes, that irresolution on the one part, and afterwards inconstancy and instability are the most common and apparent vices in the nature of man; wherby "we escape as it were from ourselves, and we ourselves rob ourselves^d." Seneca saith, that "unstableness, and fluctuation, is the greatest signe of an ill minde^e." And he that is shaken like a reede, now this way now that way, and not firme in his resolutions, is a man altogether incogitant, imprudent and not sound^f. This want of

^a Persa. Atque Ædepol firmé ut quisque rem accurat suam, sic ei procedit.

^b In Catilin. Priusquam incipias consulto, et ubi consulueris maturé facto opus est.

^c In proverb. Diu delibera, cito facito.

^d De la Sageſſe, c. xxxviii.—Ipsi nobis

furto subducimur.

^e In proverb. Maximum indicium malae mentis est fluctuatio.

^f Car. Paschal. lib. de vit. et virtut. c. xxxv.

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firmnes, this inconstancy is defined to be a speciall crime of imprudence, fayling to performe a good purpose^s. The orator demaunds, what is more shamefull than inconstancy, mutability and levity^h. The word of trueth reproves it, where the apostle saith, "I marvel that ye are so soon removed." And in another place he saith, "that we henceforth be no more children, tossed to and fro, and carried about with every wind of doctrine; by the sleight of men, and cunning craftines, wherby they lie in wait to deceiveⁱ." St. James describes them fully, "that a double-minded man is unstable in all his wayes^k." Butt the king sayes heere in his writ, "firmly injoyning:" and it is kingly to be firme in his resolutions and commaunds; his heart and his determinations ought to be like Job's heart, as firme as a stone; his precepts and decrees like that of Darius, who with his princes and captains made a firm decree, which is a royall statute^l. The true embleme of a gallant prince is a salamander, which lives in the fire that consumes all other things, and is constant in the greatest daungers. So the father alledges, "that grave men have their foundation on a firme rocke, on solid stability;" and are not shaken with smalle winds, no not with stormes and tempests, to change their good purposes^m." The poet could affirme of himselfe,

The resolutions of my minde
Are fixed, and do firmly bindeⁿ.

The sacred and prophane stories are full of examples of the levity of some, and the unhappy consequences therof; and of the firmnes

^s B. Thom. Secunda secundae, 9. 55. art. 2. ^h Cicer. 4. Tusc. 7.

ⁱ Gal. i. 6.—Eph. iv. 14.

^k Jam. i. 8.

^l Job xli. 24.—Dan. vi. 7.

^m S. Cyprian. lib. iv. ep. 2. Graves viros super petram robustam solida stabilitate fundatos.

ⁿ Ovid. epist. Permanet in voto mens mea firma suo.

and stable constancy of others, with the great benefits thereby gained. But the recitall of them would prove too voluminous. I shall propose the advice of the holy apostle, applicable to all great actions, especially to matters of faith: "Lett us hold fast the profession of our faith without wavering." So ought princes to performe all their just and worthy undertakings and purposes, without wavering: for faith another apostle, "He that wavereth is like a wave of the sea, driven with the wind, and tossed^p. But he that is firme in his righteous purposes," the psalmist pronounceth "shall not be afraid of evill tidings," and he gives the reason, "Because his heart is fixed, trusting in the Lord^q." So ought princes to be firme and fixed in their good purposes, and just commands: not light, or wavering: butt having done their duty, to trust God with the successe, who is the great governor of all things.

^p Heb. x. 23.^q Jam. i. 6.^r Psal. cxii. 7.

That proclamation being made.

BY intendement of law, the freeholders of every countey are supposed to be present att every countey court: yett so carefull is the law to avoid any surprisal of them, and to give due notice to them in a matter of so great consequence to them, as is the choice of their deputies to serve in parlement; that the writ commaunds the sherife to publish, by proclamation beforehand, the day and place of the execution of this writ; to the intent that all persons interested may, if they please, be present att it. And this agrees with the derivation of the word in Cowell, “To proclayme is openly, and very much to crye out^a;” to speake aloud, that he may be the better heard by the standers by. He calles it a publique notice given, of any thing wherof the king thinketh good to advertise his subjects. As he doth commaund the sherife by this writ, that proclamation be made of the day and place of the execution of it.

We find as antient as E. 1. time, in the rolles of Gascony, a graunt by the king to one and his heirs; of the right of proclayming att Bayone, with all things therunto belonging; rendring therefore to the king a rent. And in the same king's reigne, a proclamation, uppon the banishment of the Jewes, that every one should reveale their debts; and that none can pretend he knew not of the proclamation^b.

^a Hoc verbo. Proclamare est palam et valde clamare. ^b 8 E. 1. Rot. Vasc.
con. m. 4. Cridam sive jus proclamandi apud Bayone, cum omnibus pertinent. ita quod reddat inde regi, etc.—21 E. 1. Plees en parlement. Lib. apud Turrim, f. 60. b.

By the statute of articuli super chartas, magna charta is to be delivered to every sherife, to be by him read four times a year before the people in the full countey, and the like for the statute of Winchester: and there is much of proclayming of statutes in the record of the thirtieth year of this king, and in the reigns of most of his successors. As proclamation uppon writs concerning the staple, and other forrein and domesticke matters in the time of our king E. 2; touching fayres in E. 3. time, and publishing of statutes, forbidding to goe beyond sea; and the lady Segrave and severall others were punished for doing things contrary to the forme of the proclamation, or defence of the king^c.

In R. 2. time, the statute of Winchester was sent into every countey to be proclaymed, and for persons indicted to render themselves. H. 4. by proclamation restraines sale of victualls and wine, etc. and it is enacted in his time that proclamations be awarded against riotors. And this very clause of the writ is in his time enacted. H. 5. proclaimes, that none shall wear a sword in the king's court. Of writs to the bishop, against assaulting lords of the parlement, for wages of knights of the parlement, against persons indicted. Uppon fines. In this king's time (H. 7.) a case was adjudged, that a latter commission of assise, proclaymed in the countey, doth not make voyd a former commission without perticular notice. Butt a proclamation uppon an exigent, a writ of right of gard, or a writ of mesne every man

^c 28 E. 1. c. i.—28 E. 1. c. xvii.—P. 30. E. 1. rot. 101.—13 E. 1. c. x.—13 E. 1. c. xxxv.—1 E. 2. and 2 E. 2. Commun. in scaccario.—9 E. 2. pat. pt 2.—14 E. 2. pat. m. 23.—2 E. 3. c. xv.—5 E. 3. c. v.—17 E. 3. Brevia regis.—36 E. 3. BR. term. P.—43 E. 3. stat.—12 E. 3. rot. claus. pt i. m. 2. dorf.—31 E. 3. c. ii.—25 E. 3. St.—38 E. 3. claus.

in the countey is bound to take notice of. And those writs are not good without such solemne proclamations^d. About exigents and outlaryes in H. 8. time, and of the king's auditors, and of severall statutes. So in E. 6. time about writs and severall other perticulars. And many in queen Elizabeth's time about recusants, bankrupts, excommunications, servants and perjury, and fundry other perticulars. And in king James his time also, touching the like matters. Butt I may have bin too perticular already^e.

Among the Jewes we are informed of proclamations used in their government; and when a condemned person went to be executed, a cryar went before proclayming^f, that such a one, the son of such a one, came forth to be stoned, and such were witnesses against him: and if any could shew that he was innocent, he was to make knowne his reasons.

They had their proclamations in Italy, as appears by Machiavel. In Germany, as is testified by Thuanus. And the testimony of Pasquier, for them in France^g. In Sweden the meeting of their ricksday is proclaymed with the found of trumpetts and kettle drummes, by a formall officer in a solemne manner, for the time and place of it. And the like use of proclamations

^d 7 R. 2. c. vi.—3 R. 2. c. iii.—T. 8. H. 4. BR. rot. 15.—13 H. 4. c. vii.—7 H. 4. c. xv.—H. 2. H. 5. rot. 65.—9 H. 6. c. 11.—11 H. 6. c. xi.—23 H. 6. c. xi.—8 H. 6. c. x.—4 H. 7. c. xxiv.—Kellaway, f. 116. a. b. ^e 6 H. 8. c. iv.—33 H. 8. c. xxxix.—32 H. 8. c. ix.—33 H. 8. c. ix.—1 E. 6. c. x.—5 E. 6. c. xxvi.—13 El. c. ix. vii.—29 El. c. vi.—5 El. c. xxiii. and c. iv. and c. ix.—1 Ja. c. xv.—3 Ja. c. iv.

^f Lib. ii. de synedr. Seld. p. 534.—Mifna, tit. fanhedr. c. vi.—Praeco anteibat clamitans, etc. ^g Hist. Fiorent. lib. ii. f. 66. Fere per bando publicare.—Lib. xxxix. 830.—Recherches, f. 161, 162.

in all countryes is used, and is necessary to give publique notice in all matters requisite.

Butt I must check myselfe in a matter so universall, so generally practised and so well knowne to all, not to spend so much pretious time and leisure.

C H A P. XXXVII

In your next countey court.

THERE (as is before noted) the freeholders of the countey, whom this buisnes chiefly concernes, are intended to be present; and therefore, most proper in that place to give the notice.

This countey court is the place where justice is administred to the inhabitants of the countey, and therefore hath the name of court, wherof somwhat in this place; reserving other matters relating therunto to other places.

The Latine of the writ in this place, saith only, “ in your next countey^a :” butt the word court is to be understood, and signified by the use of the word “ comitatus” in this place. Of which, by it selfe, another opportunity will be given of discourse: and I hope it may be not impertinent or unpleasant, uppon this occasion, to show the severall acceptations of the words court, and of curia, curtis, cortes, curtilagium, curatus, etc. of the same etimology, and from whence our word court seemes to have had its derivation; and from whence may be noted the beginning and varying of the word, and some light and example therby in matters of antiquity, and story of the like nature.

The lowest acceptation of the word is from curtis, which in Greeke signifyeth a cage or coule, wherein to keepe birdes. The Romans called it cortem and cohortem, a place in a countrey house inclosed where they used to keepe geese, duckes and other birds

^a In proximo comitatu tuo.

for proviſion of the table^b, and which our farmers wives uſe to call their poultreꝝ-houſe or hen-houſe. From hence it came to be applied to a heyſe or yard of huſbandry; from thence, to a gentleman's and nobleman's ſeate, and to a king's pallace; from thence, to tribunalls of juſtice, and to the meeting of the ſupreame publique counCELLS. From ſuch meane beginnings moſt of our higheſt, and greateſt humane gloryes have their extraction; and may be a reaſonable note of humility to all who are, or may be, concerned in this word court. “Acknowledge (ſaith Spelman) from what meane (if I may not ſay ſordid) beginning did ariſe the theater of humane majeſty^c.”

From hence it went a little higher; cortez was taken for a huſbandman's yard or heaſe, and curia, curtis, curtillage, curtillum, for a yard or court before a houſe, and for the ground incloſed about a houſe; ſometimes likewiſe, for a garden of herbes or kitchen garden, and in an old MS. gardeners are called curtilers^d. A little above that we find the word court uſed for a countrey cottage; as it is ſayd in the ſalick law, “the dogge the keeper of the houſe or courte” when all were gone forth to worke^e. And, for a farme, with the lands layd to it, which the French call curtis; as the Italians, manſus^f. So is that to be taken: “he graunted to St. Benediſt 18 courts of his patrimony,” that is 18 farmes^g. Bracton uſes the word for an houſe and place of dwelling: ſpeaking of one eſſoynd for

^b *Kυρτίς*.—Varro, lib. i. c. 13.—Pallad. lib. i. tit. 22, etc.—Martial. *Raidcae cortis aves*.—Ovid. *Abſtulerat multas illa cohortis aves*. ^c Gloſſar. verbo *Curs*.

Agnosce é quam humili (ne dicam ſordido) initio theatrum illuxit humanæ majeſtatis.

^d Leo. Marſic. Caſſin. lib. i. c. 36.—Leg. Inae, MS. c. xl.—Lib. Ramſey, ſect. cclxxi.—Provenc. Angl. lib. iii. tit. de Dec. ^e Tit. vi. §. 3. *Canem cuſtodem domus five curtis*.

^f Leo. Marſic. Caſinens, lib. i. c. i. ^g 18 patri-
monii ſui curtes S. Benediſto conceſſerat.

sicknes, he saies, “the party essoyned must not go out of his court,” least he be intercepted and loose his seisin; for, saith he, “if the demandant know that he goes out of his court or house, or by chance find him in his court, he may lay hands on him^h.” According to this it is sayd, that the word court in Dutch and English signifies butt a house. And Eadmerus speakes of one that “built a court for himselfeⁱ.”

Curia also signifies a family; “as a loafe of the court,” a household loafe or a loafe of the family^k. And so, many families together, many seates of noblemen and gentlemen heere and in Fraunce are called courts; and the king’s house or pallace is called the king’s court, and his servants, courtiers. Thus it was among the Gothes. One saith that “the yard of the court was inclosed with a large compasse, so that the greatnes therof showed it to be the king’s court^l.” And both with us, and with the Italian, Spanish and French, corte, cortile, and court signifies the king’s pallace. After Menevensis writes alwayes, “brought up in the king’s court,” etc. So in another place, “I remained 8 moneths att that time with the king in the court^m.” Antiently, and in H. 3. time and before, and sometimes after, hospitium generally was the latin word for the king’s house, where he lay; and curia, feldome used for it: as may be gathered by the letters patents of the stewards, and marshalls in those dayes, called seneschalli hospitii, et marescalli hospitii. And Britton used the same word in old Frenchⁿ. Butt for many years,

^h F. 358. Nec exire de curia sua.—Si petens scit eum extra curiam suam, vel in curia sua forte ipsum invenerit.

ⁱ MS. Sir Rog. Owen, c. vii. 2 p^t, f. 2.—F. 7. art. 30. et f. 8. art. 10. *Ædificavit et curiam sibi.*

^k Unum panem curiae.

^l Jornand. de reb. Get. c. xxiv. Area vero curtis ingenti ambitu cingebatur, ut amplitudo ipsa regiam aulam ostenderet.

^m De gest. Ælfredi. In curto regis nutriti, —Cum rege illa vice 8 mensibus in curto mansi.

ⁿ Hostel du roy.

and att this day, the dwelling house of the king and his children, and of divers of the nobility and gentry, are called courts. And so it is in France, where they say "the king's court, the dauphine's court, the monsieur's court," etc°. Likewise in Latine, curia signifies the place where the prince or great officer dwelles; hence were the curiales comites called. And in Spayne curia signifieth the towne where the king lyeth^p.

Varro affirmeth, that from the company of birdes kept in countrey houses for provision, which they called cortes and cohortes, the troupes and companies of soldiers came to be called also cohortes; and the king's family, where many people were, came to be called court^q. The word curia was also taken for partes of the people: as when Romulus divided them into 30 partes, they were called curiae, to which 5 more were added; and they were the 35 curiae or tribes of the Romans, as there were 12 tribes of the Israelites. And some of the romane cittizens were called curiones^r.

Another acceptation of the word was more sacred among the Romans: as Cicero^s speakes of the curia called the temple of holynes; and there were curiales flamines, priests of courtes, and curiales mensae, altars on which they sacrificed to Juno, who was called Curis; and with them the word curio signified the priest of the court, which the French interprets the master of a court, their sacrificer. The Italians also say a curio, or a priest^t, the Spanyards say cura, and is the same with our curate who hath the spirituall charge of a warde or tribe; wherof Varro writes, "that in courts, the priests

° La court du roy, du daulphine, du monsieur, etc.

^p Digest. Code.—

Christopher de Paze.

^q Ling. latin, lib. iv.

^r Sextus. Papyr.

^s Pro Milone.

^t Sacerdos curiae.—Le maistre d'une curie, leur sacrificateur.

—Curione, prete.

did take care of divine matters, as the senate did of humane affayres in the curia hostilia^t, etc. Plautus calles a poore leane lambe, agnum curionem; and Apuleius, on the contrary, calles a fatt lambe, incurionem^u: perhappes not unagreeable to that phraſe which, with us, ſome uſe when they call a leane pigge, a tithe pigge. Curiaca in Greeke ſignifies the dwellings of God; and every chiefe prieſt was called chiefe curate^w. With us, he that exerciſeth the charge of the miniſtry is called a curate; and the function itſelfe, the cure of ſoules^x. It was very antient with the Romans to call thoſe places, where they exerciſed holy rites, curiae, even in the time of Romulus; and the ſame is mentioned by Virgil.

Thither did all reſort,

This temple was their court^y.

Butt the ſignification of this word court, as it is more proper to our preſent purpoſe (though all the ſignifications of it have a dependance uppon one another) is as it is taken for a tribunall, or place where juſtice is adminiſtred; and, for a publique counsell, the ſupreame tribunall of juſtice and legislative power of a nation.

With the Graecians kuria is power, dominion and authority, and kurios^z, whom we call lord; and the Latines dominus is one furniſhed with power, who exerciſeth judgment. Kuriologia is a ſound narration of a matter, which is called placitum, a plea^a. Kurion, an authentique writing or recorde. Kureo, to approve or decree, and a ſentence or vote in counsell. And the Athenians uſed

^t In curiis ſacerdotes ita res divinas curabant, ſicut ſenatus res humanas in curia hoſtilia, etc.

^u In Aulul.—in Florid.

^w Κυρίακα.—ἀρχιερεὺς. Curio

maximus.

^x Curam animarum.

^y Æneid. vii. Hoc illis curia tem-

plum.

^z Κυρία.—Κυρίῳ.

^a Κυριολογία. Placitum.

the word for the publique counsell it selfe^b. Butt others will not have the word curia derived from the Greeke kuria, how neere soever in letters or signification. Some canonists would have it curia, à cruore, bicause of criminall justice. Varro brings curia from cura, bicause in court the publique cares of the people were undergone. All of them agree with the notion of it amongst us, as att this day.

It is true, that in the Saxons times, the severall tribunals and publique counsell heere were called gemots; as the swanimote, halmote, wardmote, burghmote, hundred gemot, scire gemot, folc-mote, and wittena gemote; moterne, the place of meeting, and motebel, the bell that was runge to call them together; and all were from the saxon word gemettan^c that signifies to meete, and gemote the meeting, the assembly; and we say att this day the lords and commons assembled in parlement. And so the French called their publique counsell, the assembly of estates; according to that of the Hebrewes, where there were many colleagues (as it is in judicatories) sitting together, they called it a sanhedrim, that is a sitting together an assembly or meeting together, so called from the greeke wordes which were also used by the Graecians in the same sence. The like, of the talmud; and familiarly amongst schollars that is called the booke of the ordinary judges mett together; in which sence Paulus Riccius calles it the booke of the senators mett together: and of the sanhedrim in the temple it is said, they were called sanhedrims, as it were meetings or sittings together. In the evangelists and acts of the apostles it is mett with as in the old testament, in the same notion with the Hebrewes; and in

^b Κύριον.—δύτη κυρία.

^c Gemettan.

the Latine is so rendred, an assembly or meeting, and so our english translations reade it ^d.

Bertram often mentions generall meetings of the Israelites by the names of the generall assembly, or meeting together of the cittyzens or assemblies of Israel, the meetings of senators, of the multitude, etc. Such meetings are sometimes in the Latine called conciones, a calling together of people, a congregation; and of the like meaning is the word church, ecclesia, the presbitery, or auditory; all importing a meeting of people together, being called or summoned ^e. The hebrewe word for it hakkahal ^f, comes from the roote kahal, that is he congregated, assembled, or called the people to meet together; and from thence is the word kahal also for a congregation, or company of people called and mett together.

Concio or coetus is also interpreted to be “a frequent assembly, or meeting or comming together of the cittyzens, called by authority of the magistrate att fitting times and places ^g.” The greeke word affords the like interpretation; and is rendred by the Latin an assembly, a meeting, a congregation, a councill, a comming togi-

^d L'assemblées des estats.—Jo. Drusius ad difficil. loc. Num. c. xlviii.—Buxtorf. Lexic. Talmud. col. 1509, 1513.—Seld. de Syn. lib. ii. p. 106.—Συνέδρα, συνεδρία, συνεδριον, συνέδριον.—Scaevol. lib. ult. tit. Decret.—Liber judic. ordinariorum.—Jo. Buchon. ad sentenc. iii. dist. 2. quaest. 3. art. 1.—Petrus Comast. Hist. eccles. reg. iii. c. 15. Vocabantur synedrae quasi confessus.—Prov. xxii. 10. and xxiv. 8. and xxvi. 26. and xxvii. 22.—Judith. vi. 4. and xix. 11.—Matt. x. 17. and xxvi. 59.—Mar. xiii. 9.—Acts v. 21, 27.—Concilium, confessus, etc.

^e P. 74. Universalis civium coetus. Coetus Israelis. Senatorum coetus. Agmen.—2 Chron. xxx. 2. Η' ἐκκλησία, πρεσβυτέριον, ἀρχοαλήριον.

^f קהל, קהל ^g Cragius de rep. Laced. lib. ii. c. 7. Conventus civium frequentior, magistratus auctoritate, in loco et legitimo tempore convocatorum.

ther of the cittizens, a synode^h; all relating to the meeting of persons; and so frequently used by them for all kind of meetings, that Aristophanes applyes it to the meeting of good wives a goffepingⁱ. The Lacedemonians and Athenians called their publique councells by that name, and from their word, to call: the Romans had their called councells, and their curia calabra, from calling, bicause the people were called to meet there^k.

The word presbitery is properly the congregation or meeting together of the elders^l; and comes from the greeke word which signifies I undergoe an ambassy, I tranfact or doe any thing as a deputy, I intercede for another^m; the proper buisnes and worke of members of councells mett together as deputies, and ambassadors of the people. And it is very much to note the consent of our old word gemote, to that of the Hebrewes, Graecians, and other nations wherby they signified their tribunals, and publique councells; for which they had also severall other names antiently, as an auditory, a place of meeting of the people to heare what should be said unto themⁿ.

The Germans call them diets, as the antient Gaules did; "they mett in diettes:" and the Italians have the word in the like sence; "Those of the league made a diete att Cremona^o;" and Guichardine hath the word in the same sence. It signifies in low Dutch,

^h Ἐκκλησία. Coetus, concio, congregatio, concilium, conventus civium, synodus, etc. ⁱ Ἐκκλησιασάσθαι. ^k Menochius, col. xlv. — Καλέω. — Comitia calata

à calando, hoc est à vocando, vocata in eam plebe. ^l Πρεσβυτέριον. Seniorum congregatio. ^m Πρεσβεύω, legationem obeo, in legatione quippiam ago et tranfigo, pro alio praecedo intercedo. ⁿ Ἀχροαθήριον. ^o Pasquier Recherches. Diettes. — Matchiavel hist. Fior. lib. viii. f. 242. b. Fece la lega una dieta a Cremona.

the people; butt others derive it from the greeke word which signifies feeding together in a house, which we call diet^p: and their word mal, for a publique councell, signifies also feeding, from whence might come our word meale and meales-meat; and both of them beare the sence of a house of justice, or meeting of people for justice. Diet they interpret the opinion in judgement; and mal, a meeting for lawe, a conference or parlement^q. And some would have it so, bicause att meales discourse and conference is had; though not so proper, about matters of judgement or councell. In the lawes of the emperor Charles the great it is sayd, "Lett none delay to come to the mal," or meeting of justice, "one about summer, the other about autumn;" and mal is interpreted a place appointed for jurisdiction^r, the same thing as the old word gemote, and the later word court, with us doth notifie. The Germans have other words^s of the like signification, for an assembly or congregation. The Swedes use the words ricksdagh and herdagh, that is the kingdome's day and the Lord's day, when they meet for the dispatch of publique buisnes.

Butt to returne to our word court, which was received in the place of the word gemote shortly after the Normans invasion; and is now sufficiently knowne with us to signify all manner of places where judges sitt to heare causes, and to pronounce judgement; which are called the king's courts, and courts of justice, and that from the lowest to the highest of them. So we say the court barons; and curtis is used for a mannor by Lindwood, "that it is a

^p Διαίτα.
conventus juris.

^q Minshaw, hoc verbo; Dieta, arbitrium in judicio.—Mallus,
^r Lib. vii. c. 96. Ad mallum venire nemo tardet, unum circa
aestatem, alterum circa autumnum. — Mallus est locus juri dicendo deputatus.

^s Richtversammlung.

manfion, or a mannor to dwell in ;” and the lord of it dwelling there, his tenants reforted to him for juftice, and theruppon it came to be called a court baron. So we fay a court leet, a court of antient demefne, a towne court : and the word cortis is ufed for a towne itfelfe, “ as in the next towne, which they call a courte ; and a moft noble courte called Clifine in Lombardy ;” and the like.”

So we fay the hundred court, the countey court, the court of admiralty, of the exchequer, of the common pleas, king’s bench, and court of chancery ; the inferior courts, fo called bicaufe kept in the place where the lords court or dwelling was, and fuperior courts (which now are att Weftminfter) fo called bicaufe antiently kept where the king’s court or refidence was, wherof Sir Roger Owen writes^w. It is not unknowne, that in the time of William the conqueror, and of many kings after him till the latter end of the reigne of king John, or the beginning of H. 3. time, the king held butt one high court of juftice and equity, and that was in the common halle ; and as the king removed, fo did the court remove with him. Butt when it grew over-burdenfome to fuitors to follow the court att every remove, it was among other the liberties of England obtained for the fubjects, that the common pleas fhould not any longer follow the king’s court, butt fhould be holden in a place certain. Heeruppon was a new court erected, and appointed to be held att Weftminfter, called att this day the court of common pleas ; and afterwards (faith he) the king, with the confent of the ftate of parlement, allotted pleas of the crowne to one court, common fuits to another, and matters of renew to a third : and att this day they and

^t Provincial. Angl. lib. iii. tit. de decim. Est enim curtis mansio vel manerium ad inhabitandum.

^u Flodoard. hift. rem. lib. i. c. 17. In propinqua villa quam cortem vocant.—Lindenb. e Chron. Guelph. p. 183.

^w MS. c. vii.

the chancery are kept in Westminster, which is the king's pallace; and the court of marshalsey may, if the judges please, be now kept within his house, it being the court for his servants and within the verge.

Thus *kuria* signified among the Graecians, as hath bin noted: and Virgil^x remembers the antient usage, to have justice in the king's pallace. So we find in the lawes of the Lombards, "they ought to compose the matter, as the king's court saw fitt." And (saith Spelman) pleas and juridicall tribunals were called courts, because they were kept in the houses of kings and of the nobles; and their vassals or tenants were called *cortales*, or peers of court^y, who were the judges of those pleas. The French call their tribunals of justice, "the court of parlement^z." And that which is our supreme court of justice, and supreme councill, we call the high court of parlement. And shortly after the time of the Saxons wee find it so stiled by the writers; "as the highest court, the great court," and the like^a. Bracton, our old author of law, gives it the same name. And Fleta speaking of it, saith, "Also the king hath his court in his councill, in his parlements^b." Which court, in the subsequent words, he explaines to be "an house of judgements. There are determined the doubts of judgements," etc^c. Another of our antient authors in the French of his time saith, "We will, that our court doe judge of such matters as the earles and barons doe in time of parlement^d."

^x *Æneid*. vii. ^y *Lib*. i. tit. 2. *Componere debebant, sicut curtis regia exigere videtur.—Verbo Curtis.—Pares curtis.* ^z La court du parlement.

^a Coke epist. 9 rep. *Curiam altissimam, curiam magnam.* ^b *Lib*. i. c. 2.—*lib*. ii. c. 2. *Habet rex curiam suam in concilio suo, in parliamentis suis.* ^c *Ibi*

terminati sunt dubitationes judiciorum. ^d Britton, f. 41. *Volons que nostre court soit judge, sicome counts et barons en temps de parlement.*

In this sence the old Graecians called their publique councill kuria^c, and the sentence by suffrages. And the antient Romans had their curia hostilia, the house that Tullus Hostilius built for his pallace; and afterwards it became the chiefe councill house, whither the senators assembled, and mett there for the determining of state matters^f. And the court which Pompey built, therefore called curia pompeia, where other citty magistrates were admitted with the senators. And curia julia, which Julius made for forrein matters, and ambassies^g.

The Germans used the word curia for their publique councill^h untill the time of Maximilian I. wherof many authorities are cited; as of the golden bull of the emperor Charles 4. published in the courts of Norimberghe, and Mentz. Their supream councill or diet is also called by their authors, in the description of it, the generall court, the great court, the solemne court, the court of the princes, with many of the like appellations relating to the worde curia. And their poet, speaking of the emperor's holding of his publique councill, saith,

“The court of the grave fathers, in much state,
Att the assembly he did celebrateⁱ.”

It hath bin before noted, that a court in the dutch and english languages doth signify a house; and therefore as we say the court of parlement, so we also say the parlement house, and “the lords

^c Κυρία.^f Alex. Gen. lib. vi. c. 11.^g Rosin. antiquit. lib. ii.

c. 5.

^h Arumeaus de comitiis, p. 15.ⁱ In curiis norimbergenfi et

metensi, etc.—Radovicus, lib. i. c. 46. De gest. Fred. 1. — Trithem. in Chron. Hirf-
chang. an^o 1275. — Henric. Rebdorfens. an^o 1299. Curiam generalem, magnam,
principum solennam curiam, etc.—Concelebranda patrum solenni curia coetu.

house, and the house of commons; the upper house and the lower house of parlement^k." So in London they have an inferiour antient court of justice, which they call the hustings, from hus which in the germane tounge signifies a house, and tings, that is pleas, buisnes, judgements, things: hustings, a house of pleas, buisnes, judgements, thinges; and this word was in use before the Norman's invasion, as appears by the records of that court yett extant, and by the name itselſe still in use among them. We say likewise the parlement chamber, the councill chamber, the starre chamber, the exchequer chamber, etc. The like they have in France; "as the chamber criminall, the chamber of accounts, the golden chamber," and the like, where such jurisdictions are exercised^l.

The hebrew word for the sanhedrim is translated "the house of judgement^m;" and their most eminent tribunals were so called. The Arabick is the house of law or judgementⁿ. The german word for a senate, or court of councill, is proper for a house also: so is their word translated a supream court from the low Dutch, and a councill or meeting where lawes are made; hof and hove^o being the proper wordes both for a house and court. The severall estates being there mett in their diett, or supream court, are called distinctly by the names of the colledge of electors, the colledge of princes, and 3. the colledge of cittizens^p. So the parlement in France is called the colledge or house of the supream judges^q.

^k Domus superior, domus inferior, domus parium, domus communium.

^l Code des decis. forens. lib. i. tit. 53. La chambre criminelle, la chambre des comptes, la chambre d'oree.

^m בית דין Domus judiciorum.

ⁿ Domus legis vel judicii.

^o Hove, et koniglicher hove.—Hofraedt, een opper

hof.—Een hof, daermen dinght.

^p Collegium electorum, collegium principum,

collegium civium.

^q Lupanus, lib. ii. f. 465. Supernorum judicum collegium.

And according to those denominations of the Germans, the estates of Sweden being mett in their ricksdagh, or supream publicke councell, when they consult aparte, each state by themselves in severall places, where they meet and advise in distinct bodyes, they are called, the colledge or house of the clergy, the colledge or house of the nobility, the colledge or house of the burghers, and the colledge or house of the boores. It hath bin given as a note, that all the members, when they enter into this house of parlement, must leave att the doore therof all their passions, and respect of persons, and act in this house as in the house of God, and as in his speciall presence.

To be held after receipt.

THE times of holding the countey courts in every shire are certaine, once a moneth, and this appears in the lawes of Edward the elder, then called folcmote, and scire gemote, and the sherif's gemote, now called the countey court. It is held (saith Spelman) by the institution of this king Edward, every fowerth weeke, as it is att this day, and there are determined many civill controversies, and some praediall arising within the countey^a.

The time of holding the countey court is knowne to the freeholders, who by intendement of law are all present att them, butt the high sherife taketh uppon him, sometimes to adjourne the countey court to another time and place than the usuall, especially on the occasion of choosing members of parlement, yett it hath bin disputed, whither without consent of the freeholders, who are the judges of the countey court, he may doe it, yett the same is frequent, and not questioned att this day.

Uppon these words for proclamation to be made by the sherife, att his next countey court after receipt of the writ, a question hath bin stirred, whither the sherife after receipt of the writ, and before the next countey courte, ought to proclaime the time of the election beforehand, that the freeholders may have timely notice, and be accordingly present att the election. Butt it

^a Leg. Edwardi senioris regis Anglo-Saxonis, c. ult. *gerefar gemot*. — Glossar. verbo Gemot.

seemes by the following wordes, that he is not bound to make such proclamation beforehand, bicause it is sayd afterwards; of the day and place aforesaid, that is not of the day and place of the election, or of the holding of the countey court, butt of the day and place of holding the parlement. And I am informed, that att the last affizes in Essex, the writ then comming to the sherife, and that the day of holding the countey court, he did then, by advice of the judges, without making any former proclamation, or adjourning of the countey court, begin with the election of the knights of that shire.

Of this our writ.

IT is truely said, that all writs or praecepts of justice, in antient times, issued from the hands or mouth of the king^a. And they are alwayes in his name and stile, therefore he calles it "our writ." And they are properly the king's writs. In the digest of writs, composed by Theloal, he cites Bracton's definition of writs, that they are called briefes or writs, bicause they recite the matter, wherof they treat, and the intention of the demaundant, in a few words briefly, as doth the rule of lawe, which briefly recites the thing that is^b.

Theloal's owne definition is this, a writ is a formal letter or epistle of the king's, written in the latine tounge, in parchment, sealed with his seale, directed to some judge, officer, or other subject, att the suite of the king himselfe, or att the complaint and suit of another subject, commaunding or authorising somewhat contained in that letter, to be done, for the cause briefly expressed in the letter, which is to be discussed in some of the king's courts by the law^c. Sir Thomas Smith commendeth our writs, that it was not possible to comprehend so much matter, so perspicuously in fewer wordes, and he was a proper judge of it, being himselfe a secretary. Certainly (saith the chiefe justice) originall writs are so artificially and briefly compiled, that there is nothing redundant or wanting in them^d. The same secretary to our queen Elizabeth holds, that all the secretaries of the Christian world may learne to express much matter in few and significant words, from the forme of our writs. And they may fitly be called the king's writs, for brevity is imperatorian^e.

^a MS. Sir Rog. Owen, c. vii.^b Lib. i. p. 1. Bracton, f. 112 and 413.^c F. 1. b.^d Coke on Litt. p. 73.^e Brevitas imperatoria.

The Graecians have a word of the like sound with breve, signifying a writing, which conteines the summe of the matter, as our writs doe^f. And so is the expression in the councill of Carthage, a brieve is called, an epitome, and a concise writing^g. The word was in use in the empire in the third age after Christ, and afterwards in the church, from whence are the apostolicke briefs^h. Theloal writes, that our writs begin with such words, as the letters and epistles of the antient Romans didⁱ; that the Germans to this day use the word brieve for every letter, or epistle; and the Normans use it for all manner of legall proces. The best example of brevity both for manner and matter of it, is that, where the apostle affirms, if there be any other commaundement, it is briefly comprehended in this saying, namely, “thou shalt love thy neighbour as thyselfe^k,” in which commaund indeed, there is very much matter contained in a few wordes.

The antiquity of our booke of writs, called the Register, is long before the conquest, and in the 26th year of E. 3. it is sayd, that originall writs were in use time beyond the memory of man, and cannot be shoven, when the beginning of them first was. They are the foundations of the law, the great testimonies of the cleernes and antiquity of our common law^l.

It will not be necessary to discourse of the severall sorts of writs, judicall and originall, our authors are full of it, and of the difference between them. The writ before us is of that sort, which are

^f Βρεβρίον.

^g Zonaras. Βρεβρίον ἡ ἐπιτομή λέγεται, καὶ σύμτομος γραφή.

^h Breve apostolicum.

ⁱ Lib. i. c. 1. f. 1. b.

^k Rom. xiii. 9.

^l Lib. Assis. 26 E. 3. p. 24.—Praefac. 3 rep. Co.

called, writs or letters of message, which were of great antiquity with us, and in other nations ^m.

The Graecians had two words neere the sound of our briefs, and of the same fence; they are as antient as Julian and Eusebius, who use them, and those who wrote them they called, breviators ⁿ, and an old glossary of the lawe interprets those words, by epitome ^o.

In the civill law both breve and brevis are in like fence, and very often used for letters, and breves and brevia occurre in Theodosius his code, Cassiodore's precedents, Symmachus his epistles, and others of that time ^p,

An exception is taken to our writ for being in the latin tounge, which cannot be altered butt by act of parlement (if it were inconvenient) and to dispute that point requires much consideration, and may be proper for another time. Before the reigne of E. 1. all writs originall and judicall, and all the bookes of our law, as Glanvill, Bracton, Fleta, and Novae narrationes, and booke of entries, and all the statutes yett extant were published in the latine tounge, and in his reigne, and the reigne of his son, and some of R. 2. are so likewise.

Butt we find an act of parlement in E. 3. time ^q, reciting, that it is often showed to the lords and commons, of great mischief that the lawes be not kept, for that they be pleaded, and judged in the

^m Bracton, f. 413.—Fitz. N. B.—Co. on Litt. f. 72, 73. praef. 3 rep.—Bracton, f. 328. b.—Regist. orig. f. 2. b.

ⁿ Βρέσιον, βρεῖσιον, βρεσιάτορες.

^o Justin. auth. 105. c. ii. Si autem §. 4.

^p C. tit. de conveniend. fisci debit.

lib. v. de Apochis publ. lib. i. et tit. 42. lib. i. Restored by Gothofred.

^q 36 E. 3. c. xv.

French tounge, which is much unknowne in the realme ; so that the people have no knowledge of that, which is sayd for them, or against them; and that reasonably the lawes shall be knowne, and better understood in the tounge used in the realme, and by so much every man may the better governe himselfe without offending the law, and the better defend his possessions; and in divers countries where the king, his nobles, and others have bin, good governance, and full right is done to every person, bicause their lawes are learned and used in the tounge of the countrey ; the king desiring the good governance and tranquility of his people, and to eschew the mischiefs, which may happen by the occasions aforesaid, ordeins by assent, etc. that all pleas, in all courts, shall be pleaded, answered, debated and judged in the English tounge, and that they be entred and inrolled in the Latine.

I shall only note heeruppon, that in the MS. booke of the rolles of parlement of this year of 36 E. 3. there is no mention of the inrollement to be in Latine.

Answearable to this statute was a passage of our king James to both houses of parlement, in the seaventh year of his reign, wherin, speaking of the common law, he saith, he wishes it were written in the vulgar tounge, and made plaine to the peoples understanding, that they might know what to obey, that the lawyers in the lawe, like the Romane priests in the gospell, might not keepe the people in ignorance. Butt (saith the historian) the king was afterwards convinced how daungerous it was to give too much knowledge to the people^r.

^r History of Great Britain, p. 47.

Certain it is, that the old lawes of our Saxon ancestors (wherof many are still extant) were written in their owne idiome, and W. 1. commaunded the use of his lawes in the English tounge*. I mett with an old wise statesman beyond sea, who spake good Latin and French, butt would not att all discourse in French butt in Latin, and for his reason sayd, that all languages butt Latin were subject to variation and corruption, that it was the most copious, cleer, and noble language, not native to any country, yett used most generally, that he knew no reason, why other nations should honor the French so much as to use their language. His reasons for the Latin, perhappes might be considered, for the making of our lawes, and putting our pleadings in that tounge.

* Ingulphus.

Of the day and place aforesaid.

THIS is to be understood, as hath bin noted, the day and place of the meeting of the parlement, not the day and place of the chusing of parlement men, and this is expressed in the writ itselfe, which commonly being read publicuely before the election, is the proclamation therof made by the sherife, in pursuance of this command. Of the day of meeting of the parlement, somwhat hath bin noted before, and of the place, wherein I shall now make a little addition. The place where the parlement is to meet is Westminster, wherof Sir Roger Owen saith ^a, Westminster heertofore generally, was the throne of the king, the bedde of his justice, and the royallest, and fittest place for distribution of justice, it being a member of London, which accordingly was, and now is, the mother of England, the lady of our province, as it is said of the city of Abel, she was a mother in Israel ^b.

This gives me a little liberty to discourse of London, wherof Westminster is by our author stiled a member; and he in another place ^c, cites the mention of a councell in the time of king Coenulphus, where London is called the royall or monarchicall citty, above all other citties in this island, that the royall scepter is in her hand, Westminster being an arme therof, for (saith he) the letters pattents of king H. 1. gave houses in Westminster streete in London. That London ordinarily conteineth the private pallace of his majesty, and his courts of justice. Of this, in the tenth year of H. 2. pope Alexander tooke notice in his epistle to the deane and chapter of London ^d, uppon their choice of the bishop of Hereford for their diocesan. In

^a MS. c. vii.^b 2 Sam. xx. 19.^c C. xvi.^d Radulphus

de Diceto.

this respect, by Strabo Babilon antiently, and after Seleucia, was the metropolis of Affyria, and Ectabane of Media. In Palestine to Hadrian, Caesarea was the metropolis, in Pontus Nico Caesareo to Justinian. In the firmament of our policy, London not being so much Cassiope as the chayre of Astrea, or the spheare that carryeth about the legall starres, it is to be stiled, the firmament of England, as Pindarus for Greece, stiles Athens; or the mother of legall discipline, as Eunaepius in Julian stiles Beritus. I wish it may be as the prophet speakes of Jerusaleme, established, and made a prayse in the earth^e.

I shall aske leave in this place for a smalle digression, touching the name of London, so much controverted, and therefore not impertinent to be endeavoured heere to be cleared. Some would have the name of it derived from king Lud, whence it was called Lud's towne, and by pronounciation London. Our antiquaries^f show the mistakes heerin, and she hath againe her name derived from the antient metrapolitan city of Sconenland called still, Lunenden, which formerly was of that note, that Eric the 4. king of Denmarke obtained from the pope to have it made an archbishoprick, with ecclesiastical jurisdiction over Denmarke, Sweden, and Norway, which before were subject to the bishop of Hambourgh: butt passing by it not long since, I find not so great fame of it att present, though heertofore it was so eminent, and as some affirme, gave the name Lunenden, by pronounciation of time afterwards called, London, to this our great citty. To me, these observations touching her name seeme lesse probable, than that conjecture, from the Brittainish word, clun Dian, or clun Din. Clun, in that language, signifies a temple, and Dian and Din signifying Diana, so clun Dian, and clun Din, they called it, from the great temple of Diana, which was there;

^e Isa. lxii. 7.

^f Cambden, Verstegan, etc.—Crantzius,

and it was usuall in those antient times, to name townes from the temples in them, to lett passe the story of Brute, and his consulting the goddesse Diana in his voyage, with her directing him to this island, and his building a temple to that goddesse heere^a. It is not obscure that Paul's church in London (as appears by the antient deeds of the same church) was antiently the heathen church of Diana, and our chroniclers mention, bones of beasts, and many heads of oxen, which antiently have bin found as they digged there, which, as the prophane writers observe, especially were the sacrifices to Diana^b. From hence might the antient Britains call it, clun Dian, and the Welch att this day call it, clun Din, the temple of Diana, and by contraction and pronounciation varying, it might be soone brought from clun Din to London.

The chiefe officers of this citty are a lord major, two sherifs, who are both judiciall and ministeriall officers, and an alderman of each warde, with their common councell, and their governement resembles that of the kingdome, the lord major their single chiefe magistrate, the aldermen as peers, and the aristocracy of the citty, the common councell, consisting of the deputies of the people elected by them, the democracy of the citty, and by a mixture of these three together is made up the common councell or parlement of the citty, who have power to make ordinances to bind the cittizens, and to impose taxes in some cases, and have the ordering of all their publique concernements.

Their officers are annuall, and eligible by suffrage of the cittizens, the opinion of the Romans taking place with them. It was their

^a Galfridus Monumethensis.
vey of London, p. 367.

^b MS. Sir Rog. Owen, c. viii.—Stow's Sur-

pleasure, that their governors should be butt annual, least by continuance of power, they should become the more insolentⁱ. Besides their owne government, it is the usuall and most convenient place, for the courts of justice, and publique councells of the nation to meet and sitt, for the government of the whole kingdome, and of the king's personall residence; and it seldome hath bin otherwise without prejudice, not only to the citty, butt to the whole realme. Nor is it new to have it so, our stories mention Brute to be the first founder of it, by the name of Troy Novant; that king Lud, the glorious builder of cittyes, repayred it and compassed it, with an innumerable company of towers, and commaunded the cittizens so to build their houses, that in farre remote kingdomes, there was not a citty, which conteined more beautifull pallaces; that he had many cittyes, yett that he loved this citty above all the rest, and made his residence there the greatest part of the yeare^k. And it was a wise part of this king to keepe his court in this citty. It added much of honor, safety, and contentment to him and his people. His successors followed his example; and the longer it continueth the residence of the prince, the more advantage both prince and people will have by it. Every man in the countrey having his friends and correspondence knowne in the citty, all dispatches thither are certaine, all commodities there to be had, and the way to fetch them, persons constantly imploying themselves thither from the countrey, can with the more conveniency, and att lesse charge dispatch the affayres of themselves and others. Where is, or can be such a mart, for all things of necessity or pleasure? Where are so many worthy ministers, so many generous marchants, to whome not only the

ⁱ Math. Westminst. p. 34. Placuit, ne imperium diutius quam annum haberent, ne per diuturnitatem potestatis insolentiores redderentur.

^k Galfridus Monumeth. Mat. Westmonast. Gloriosus aedificator urbium. Innumerabilibus turribus. — Hanc prae omnibus amabat, et in illa majori parte totius anni commanebat.

commerce, butt the policy and strength of all the nations of the world are knowne, and have bin seen; where such a world of able bodyed men to serve their king and countrey? Trade is the staffe of the commonwealth, and this citty is the staffe of trade, the increasers of shipping, and the nursery of marriners. The lord Littleton, then recorder, when the king made his last entry into this citty, on his returne from Scotland, told them, it was his majesty's imperiall chamber, and therefore fittest to be his last resort, the place where he should most solemnly, and most securely, and in the last place retire and refresh himselfe. It appeares in the Annales of our nation, that they have bin the great ballance in the greatest affayres, not to be quitted, without daunger of being over-weighed. Butt I must aske the citty's pardon, to whome I should doe an injury (which is not intended) to take uppon me in this little discourse, to sett forth her excellencies, which I acknowledge so full of desert and worth, that they require more time, and greater abilities, to give them a due expreffion.

You cause to be elected.

ELECTION is the issue of reason, discent of nature. Therefore among the Romans sometimes, an adopted son, whom they called the son of their reason and choyce, was preferred before the son of their body, the son of nature^a, as reason is above nature.

Lindwood, our famous English canonist, saith, that to elect, is to gather or choose one person out of many. Another saith, that election is the calling of some person, whom they thinke fitt to a dignity^b, whom they elect to it, as the election commaunded by this writ ought to be. Butt this manner of election of knights, cittizens, and burgessees to serve in parlement, is affirmed by some to be of no antient date, and that the first writ of summons for them to be elected, is no elder than 49 H. 3. the which opinion (the more to derogate from the honor, power, priviledges and antiquity of the house of commons) is said to be grounded uppon the judgement of very worthy and learned antiquaries^c, whose authority is much to be revered, that H. 3. after the barons warres ended, did appoint and ordeine, that all these earles and barons of the realme, to whom the king himselfe should vouchsafe to send his writ of summons, should come to his parlements, and none else, except such as should be elected by the voice of the burgessees and freemen, by other writs of the king directed to them.

^a Filium rationis. Filium naturae. ^b F. 123. Eligere est ex pluribus personis unam legere.—Electio est alicujus personae idoneae ad dignitatem facta vocatio.

^c Cambden's Brit. p. 120. & 122.—Dodderidge Antiquit. of parlements, p. 18. 20. 87.—Cotton's Posthum. p. 346, 347.—Seld. Tit. hon. p. 712. 717.

If this be so undeniable, as is affirmed, it is a two edged sword, which att one blow cutts off much of the antiquity, power, and honor of both houses equally: the lords as well as the commons are wounded by it, and both made to beginne from the sole ordinance of H. 3. by which there were to be no lords in parlement, butt such only, to whom he should direct his writs perticularly, and no commons art all in parlement before that time elected. I shall not dispute the making of such an ordinance by that king att that time, after his vanquishing of the barons; and probably in so many ages and revolutions there may have been many alterations of power, and personall dignities, and priviledges, and of constitutions of government, both as to lords and commons in our publique councells; butt it will be most becomming indifferent men, and English men, not to derogate from the due and just rights, and interest, either of king, lords, or commons, in or out of our parlements, butt to afford to every state, which are pillars of our government and peace, their due cymetry and proportion, which will keepe the whole fabricke of our politique state in the more beauty and firmenes.

To begin with the lords, the chiefe members of our publique councells; it is undoubted, that they have their seats and suffrages in our parlements, not by election of the people, butt by birthright of primogeniture. Long before 49 H. 3. we had barons and earles by tenure, and since that others created by being called to parlement by the king's writ; and some (as att this day the most of them) created by letters pattents; and being once by any of these means barons, they and their eldest sons, and sons sons after them, doe injoy the priviledge of being members of the lords house in parlement, by right of primogeniture; not as the commons have it, by right of election only. And that this was as antient as any thing of our story, appears by that of Brute, who is sayd to call to councill
the

the first borne of the people, and when he went to consult the goddess Diana, that he tooke with him twelve of the first borne^d, who it seems were his comites, and were the elder men of the people. So the counsell to Arviragus, to submit to the Romans, was by the first borne or elders^e. And king Ina thus begins his laws. "I Ina king, by consent of all my aldermen, and eldest wise men of my people, doe ordeine," etc. Which Bede renders "of all my senators, and first-borne, wisest of my people^f." And of the norman king H. I. it is sayd, that he assembled att London all "the first-borne of England^g" and great men of the land. And the like is frequent in expreffion of the counsell of antient times, as well as those of later: and although probably the Saxons introduced their custome of gavel-kind as to private possessions, wherein all the sons had an equal share with the eldest, (quaere) yett with them, and with the Swedes and Gothes, to this day, an allowance of addition in fortune was to the first borne, and with them the aldermen or eldermen were the great nobles and officers, as the peeres att this day, and present in all their publique counsell. And this right of primogeniture of our English lords, appears throughout the whole body of our records and histories, and that as antient and constant as any thing of them, and so vested and settled by the customes, and law of the nation, that it is unquestionable, that the first-borne of every family of an English peere, is by his birthright a member of the publique counsell of the kingdome; and therefore our lawe saith of them, that they are "counsellors borne^h;" and whensoever our kings have held their great counsell, consisting

^d Galfr. Monumeth. Majores natu.—Duodecem majores natu.

^e Prin.

Windic. pt ii. p. 16.—Galfr. Mon. Per majores natu.

^f Mid eallum minum

ealþorþmannum þam ylberþan þiðan minne neode.—Leg. Inae, p. 1. Omnium senatorum meorum, et natu majorum, sapientum populi.

^g Simeon Dunelmensis.

de gest. reg. Angl. col. 225, 226. Majores natu Angliae.

^h Consiliarii nati.

only of the peeres, the chiefe or eldest, the first-borne of every family of a baron or peere hath bin constantly, and in right of their primogeniture, summoned therunto; and in case they have bin omitted in any summons to parlement, they have claimed their right att the house of lords, and bin, by judgement of that house uppon their birthright, and the title therof only, admitted as members of the house of peeres in parlement. This right was insisted on by the lords house in the time of king James; and there are divers precedents in the records and journals of the lords house to the same purpose. Sometimes the barons called to parlement by writ, had in the writs themselves the limitation of the dignity to them, and the heirs males of their body. And where it was without any clause of limitation of the estate, there it is agreed by authors of no meane credit, that the title and dignity of baron goes to the heirs, that is, to the eldest son, and the discent gives also the right of being a member of the lords house¹.

The first creation of a baron by patent, was John Holt of Kidderminster; the consideration was for services done formerly, and for services, which he may doe in our councells and parlements, etc^k. therefore the king creates him a baron, to him and the heirs of his body, who are to have the same priviledges by the patent as to being members of parlement, as their auncestor, the first created baron had. And therefore constantly in the later patents of creation of barons, and other degrees of nobility, this clause hath bin inserted, that he, who is created a baron, and his heirs males, shall have, hold, and possesse a seate, place, and vote in parlements, publique councells, and assemblies, among the rest of the barons, as barons of parlement^l.

¹ Coke, Littleton, Selden, Dodderidge, &c.
m. 12.—In nostris conciliis et parliamentis, etc.
in parliamentis, publicis comitiis et conciliis, etc.

^k 11 R. 2. rot. pat. p^t i.

^l Sedem, locum, et vocem

And this agrees with that antient recognition in the statute of Clarendon, where among the avitae consuetudines, this is one, that the barons ought to be present att the judgements and counsellis of the king; and peeres in parlement are often stiled primates, and the eldest, first or chiefe men of the nation.

And this priviledge of primogeniture was not only in the greater barons, butt in the lesser barons likewise, of whom there were reckoned in H. 3. time to the number of 250, who all had the same priviledge of primogeniture to come to parlement, the eldest of each family of them, as the greater barons had, and were summoned by a generall writ to the sherife, to summon all that held of the king in capite; and they injoyed this priviledge of primogeniture; and the first-borne of each of those familyes of the lesser barons did sitt, and vote in parlement, till about the latter end of king John, or H. 3. time, when this priviledge (which goes farre in the example of it) was taken away, and theruppon it is inferred by some, that the electing of members of the house of commons did begin. Butt to that I shall say somewhat afterwards.

I shall likewise note, and acknowledge that resemblance of this right of primogeniture to the usage of the Hebrewes^m. Bertram brings the interest and right of primogeniture from Adam, by succession of the first borne unto Noah: and after the flood, when the posterity of Noah were dispersed, he saith, that it is most probable that every one in his family was prince or ruler, and priest; and from thence, he saith, those dignities came to the first borne of the nation, or family, so that the first borne of the chiefe family alwayes

^m De repub. Judaic. p. 28.

obtained themⁿ. To the which our custome of primogeniture to the barons hath no smalle relation. To this Selden agrees, and summing up the right of priesthood in the first borne, he saith, as to their interest in publique councells, it seemes necessary that we conceive, that the eldest first borne, by his patriarchall dignity, was chiefe in the government of every assemblie by himselfe, and over the rest in the same assemblie, as well first borne, as others. And in another place, he saith of civill matters, the first borne of tribes of nations, of families of the universality of the people, according to the severall differences of assemblies, were admitted to those affayres, which were to be dispatched in the name of the universall body of the people^o.

That the government of the children of Israel, before Jacob's going into Aegipt, was soly by the father of the family, both in matters of religious rites, and of civill administration, is generally agreed; and that of the 70 souls, which went down with Jacob into Aegipt, the eldest of each of the 70 families, which came of them, were the elders and publique councill, which they had in Aegipt, wherof mention is made in the holy story, and by severall authors in that comprehension of them^p.

ⁿ Verisimile omnino est unumquemque in sua familia principem seu regulum et sacerdotem fuisse.—Has dignitates ad primogenitos gentis seu familiae pervenisse, ita ut primariae familiae primogenitus eas semper obtineret. ^o De synedr. lib. i. p. 646.

Primogenitum natu majorem coetus cujusque per se gubernandi reliquis eam in eodem coetu, tam primogenitis quam aliis ex dignitate patriarchali praefuisse, necesse videtur ut existimemus.—Eis, quae totius universitatis populi nomine obeunda erant tribuum, gentium, familiarum populi universitatis, pro vario coetuum discrimine primogeniti adhiberentur.

^p Num. xi. 16.—Exod. v. 14, 15, etc.—Bertram. c. v.—Grotius Annot. in Num. xi.

Of the princes of families it is noted by Menochius, that they were the first borne of every family^a; and therefore they were called the princes of families, which the text warrants, where it is said these mentioned by their names were princes in their families. These first borne were also stiled, chiefe of the fathers and heads of families^b.

They had their princes, or heads of tribes, and princes or heads of families, which generally were the first borne of the tribe, or of the familie: the princes of tribes were heads of families, butt all the heads of families were not princes or heads of tribes^c; as many families were derived from Reuben, from his sons Honoch, Pallu, Hefron and Carmi, came the Hanochites, the Palluites, the Heshronites, and the Carmites; and the like of others. And these were called by the names of generations, kindreds, houses, families, of whom some perished in the wildernes, and others continued and flourished. And the first borne of each of them was chiefe of the fathers, and head of the family, wherof he was eldest. These chiefe of fathers, and heads of families, were by the kings called to counsell (as our nobles are) and to administer judgement, as about the bringing up of the arke, and other buisnes of counsell and judicature^d. And these signified to their families, the king's pleasure, acted for them in the publique assemblies and counsell, ruled them, and ledde them forth to warre, as Sigonius, and other authors note; and that this power and priviledge, for the most part, was derived to them by the right of primogeniture.

^a Lib. i. §. 8. Principes familiarum erant primogeniti cujuscunque familiae.

^b 1 Chron. iv. 38.—2 Chron. v. 2.

^c Num. xxvi.

^d 2 Chron. v.

—Jof. xxiii. 2. and xxiv. 1, etc.—2 Chron. xix. 8.

I shall conclude this matter with the observation touching the children of Issachar, that they were men of understanding of the times, to know what Israel ought to doe^u, the heads of them were 200, and all their brethren were att their commaund. And this explaines, who these heads of families were, and what kind of persons they ought to be. He is unworthy of the name and imployment of a noble man and senator, that shall waste his pretious time in things, which profit nothing, in vaine pastimes, societies or worse debaucheries, wherby they come to understand nothing butt trifles, and learne only how to cheate, or be cheated, how to dresse themselves like babies, or how to compasse some wickednes to the destruction of their bodyes and soules; whereas they should, after the precedent of these first borne of Issachar, study and indeavour to have understanding of the times, and to know what their nation ought to doe, and then their brethren would willingly be att their command.

This interest and right of primogeniture (as in England) so universally hath bin allowed, and the patterne of the Hebrewes therein followed in most nations. The heathens, before and since christianity, generally imbraced it. The old Romans came neere it, when the sons of senators, not yett chosen into the senate (which admits they used to be chosen) were knights, or of the equestrian ranke, out of which the senators were most commonly chosen^w. This seemes to be agreed by the german writer^x, where he saith, that antiently, the estates were called to the publique councells, and that then the dukes and counts were only temporary dignities; and after the example of the Romans, if they left sons faithfull to the

^u 1 Chron. xii. 32. ^w Rosinus de antiquitat. Rom. lib. i. p. 32. Senatorum filii, nondum in senatum lecti, equites sive ex equestri ordine fuere. ^x Arumaeus de comitiis. p. 132.

kingdome, and fitt to undergoe offices ; then for the deserts of their parents, and bicause they hoped that they would imitate their parents virtues, their first borne did succeed in the office^y, and he saith, the which is seconded by others of their authors, that afterwards, to gaine and preserve the affections of the nobles, Henry and Otto his son made those dignities to be perpetual, and by the patrimoniall right to passe unto the sons and posterity, with the rest of the inheritance^z. And the dukes, marquestes, earles, captains, vavasours, and valvasins, under these appellations in succeeding times, together with the free citties, they were called to the publique councells^a, and with those titles of duke and count in Germany, and other nations, power of government and jurisdiction have bin usually given, and descended to the eldest son.

It is said of this right of primogeniture in the german empire, that in some families and dutchies, the first borne only doth succede^b : and he hath all the rights and interest, which his father had ; and perticularly that of sitting, and giving of his suffrage as a member of their diettes : and that the immediate princes of Germany doe transmit their regall dignities, together with their dominions to their heirs ; and bicause of this right of primogeniture to be members of their diettes, they are stiled counsellors of the empire^c.

^y Hincmarus, ep. iii. c. 17. Si filios regno fidos, atque muneri obeundo idoneos relinquerent, propter parentum merita, et quod virtutis eorum aemulos sperarent, primogenitus eorum in officio succedebat.

^z Spandenbergh. in Chron. Sax. c. clviii.—Petr. Albin. tit. xi. in Chron. MS. Dignitates eas perpetuas, et jure patrimonii in filios posterisque transitorias esse voluerunt.

^a Ibid. & Lehemannus, lib. iv. c. 1. Subsequentibus temporibus una cum civitatibus liberis ad comitia vocati sunt.

^b Nicholaus Mylenus de princip. et stat. imper. jurib. p. 231. In quibusdam familiis et ducatibus solus primogenitus succedit.

^c Regales dignitates una cum ditionibus suis in haeredes transmittunt.—Consiliarii imperii.

In the lower Germany, upon their defection from the king of Spayne, a priviledge was continued, and remaines att this day to some of the antient nobility, who joyned with them, to be in the publique councells. In Spaine, the sons and heirs, the first borne of condes were intituled, viz condes, and after their fathers decease, the dignity and priviledges disceded to them, and they were called by the king unto his councells.

It is said of the peeres of France, that some of them are for the males only by discent, and that they are to judge, in the supream justice of the king, and are to counsell him in affayres of consequence^d. All the princes, great lords, and barons of France, who are the eldest and chiefe of each family, have bin summoned to the assembly of estates, and usually by the king to his councells since; nor is any countrey more favourable to the right and interest of primogeniture, than France.

In Sweden the first borne of every family of the nobility hath his seate, and voyce in their publique councells, and this priviledge is not only allowed to the eldest sons of earles and barons, butt likewise to the first borne of every gentleman, as it was heere to our lesser barons, who were by tenure; butt the gentlemen of Sweden are by pattent under their great seale, and no other with them hath the title of gentleman. Of these they have about 250 families, erected into that title, as a reward for civill or military service; and the first borne of every one of those families, so created gentlemen by their honorary lawes, hath the priviledge of being a member of their ricksdagh, or publique councill.

^d Haillan, f. 232. Sont pour les seuls mailles descendants. En la justice souverain du roy, et le conseilleres affaires de consequence.

The like priviledge is allowed in Italy, Poland, Scotland, Ireland, and most other kingdomes, to the first borne of every family of their nobility.

And although the peers of England are not elected by the people, yett they were all att first chosen by our kings, and have bin invested in that ranke of peerage, either by holding land of the king by the tenure of a barony, or by being summoned by the king's writ to be members of the lords house in parlement, or by being created lords by the king's letters patents, as hath bin noted. And they are not capable of being elected knights, cittizens, or burgessees to serve in parlement; for the writ commaunds the sherife to cause knights, cittizens, and burgessees, not dukes, earls, or barons to be elected. Wherof more may be noted heerafter, only the case of Thomas Camoyes, being a baronet and a baron, was elected knight of the shire for Surrey; and the king, by advice of his counsell, declared that election to be voyd in law^e.

Butt to revert to the election intended by this writ, I confesse myselfe unable to define the certainty of the time of commencement of such elections. Nor do I esteeme over much curiosity in such matters to be necessary, or a cleernes therin possibly to be found, especially when so many clowds of accidents, alterations, and injuries of time have interposed. What occurs to my slender observation, I only relate historically, and alwayes write with submission to better judgements.

It is a competent antiquity, allowed by some of our authors commoners, who are pleased to grant that their deputies in parlement

^e 7 R. 2 rot. claus. m. 32. dorſ.—Seld. Tit. hon. p. 337.—Co. 4 Inst. p. 47.

have a power of 400 years establishment and continuance since 49 H. 3. which is 397 years since: and to seeke no higher might well satisfy an indifferent commoner, who would not seeke to lay too low (as some have done) the interest of that honorable house, which (as will be noted) is above such issues of spleene; and that commons, representatives of people, both in England and in most other nations, have bin elected, and had a share in publique councells wherein their all is so much concerned. And that with us, long before the time of 49 H. 3. and of the Norman invasion, there were commoners in our publique councells; (butt whether elected in such a manner as now they are, I cannot assert, nor men much more learned than myselfe; especially when fundry acts of parlement have bin made for alterations of the former wayes of election, and therefore they could not be before those acts made, as they have bin since;) butt that there were very antiently elections of such great officers who were members of our parliamentary councells, and elections of commoners before 49 H. 3; the first is testified by the lawes of Edward the confessor, where he saith, that the heretoches were elected by the common councill^f, for the common profit of the kingdome, by all the provinces and countreyes, and in every countey in full folkmote; “as the sherifs also of provinces and counties ought to be elected: so that in every countey there was alwayes one heretoch chosen, by election, to leade the army of his country, etc^g.” And this Spelman calles a popular election of the heretoches^h or generalls in the folcmote. And the folcmote (as this law saith) was instituted by the british king Arthur. And att this popular assembly were the sherifs also elected,

^f C. xxv. Tit. de Heretochiis. Eligebantur per commune concilium.

^g Sicut et vicecomites provinciarum et comitatuum eligi debent, ita quod in quolibet comitatu semper fuit unus heretoch per electionem electus.

^h Verbo Heretoch, popularis electio.

which continued in such election untill 9 E. 2. And that sherifs were in parlement, (whether as members or attendants is not cleer) in H. 1. time, appears in the subscription of wittnesses to the charter of lawes made by this king att a parlement att his coronation, "these being wittnesses; the archbishops, bishops, earles, barons, sherifs, and optimates best men of the whole kingdome of England¹:" where the sherifs are putt next after the earles and barons, and ranked with them in this parlement to which (as Matthew Paris relates it) all the people were summoned^k; which could not be otherwise than by representation of their deputies elected for that purpose. As the like expreffion also of Edmerus bears it of the parlement 4 W. 1. where he saith, a decree was confirmed by the assent of the whole kingdome^l; which could not be butt by their deputies chosen for that purpose. So Cambden mentions, out of the old booke of Abingdon, that there was the king's seate; hither the resort was of the people, when they treated about the chiefe and weighty affayres of the kingdome^m. Polydor also calles the parlement in H. 1. time, the assembly of the people: and if any credit be to be given to him, where he mentions the procurators or deputies of the cittizens and of the peopleⁿ in H. 1. time in parlement, it could be no otherwise than by election. And Speed^o, from this author and from Gervasius Dorobernensis, affirmes that before this king H. 1. time, the kings seldome had the joint advice of their people, saving only att the beginning of their government, and in time of warre; which shoves, that att those times the peoples advice was had: and he saith

¹ Jo. Brampton hist. Jornal. MS.—Lib. Rub. Scac. MS. p. 163.—His testibus archiepiscopis, episcopis, comitibus, baronibus, vicecomitibus, et optimatibus totius regni Angliae.

^k P. 75 & 321. Populus universus.

^l Totius regni assensu.

^m Hic sedes regia, huc cum de regni praecipuis et arduis tractaretur negotiis—

ⁿ Populi conventum.—Polydore Virgil p. 478. Procuratores civium populiue.

^o P. 457. pl xxxv.

further, that now from the time of H. 1. the subject, best understanding his owne grievances, had both liberty in choyce of their knights and burgesſes, and alſo free voice to complaine therof in that honorable aſſembly. If this be authentique, the election of knights, cittizens and burgesſes to ſerve in parlement, muſt be elder than 49 H. 3. A little before this time Matthew Paris mentions a parlement 32 H. 3. whither (ſaith he) beſides a great multitude of barons, knights, nobles, abbots, priors and clerkes, came 9 biſhops etc^p. If there were then knights in parlement, it is ſome argument that their firſt election to parlement was before 49 H. 3. for this was 32 H. 3. And if we take magna charta^a itſelfe of the date only of the 9th year of this king, we find there, in conſideration of the king's graunt of the liberties to his people, the archbiſhops, biſhops, abbots, priors, earles, barons, knights etc. gave a fifteenth to the king. And knights being in this parlement, and partyes to this giſt of a 15th, it is ſome argument that they were then elected. So is that mention of the famous aſſembly^r, a publique counsell held att Weſtminſter in the 25th year of Edward the confeſſor, where were preſent the king, the queen, the archbiſhops with the other biſhops of England, abbots, king's chapleins, earles, ſervants or thaines of the king, and knights: where ſeverall lawes were made. And a ſtatute of R. 2^s. mentions knights and burgesſes comming to parlement, as of old time they were accuſtomed to doe: which alſo argues the election of them in thoſe times. And that they were before 49 H. 3. in his father's time is a clere testimony of knights of ſhires, in the cloſe rolle of the 15th year of king John, where we find a writ to the ſherife of Oxon commaunding him, amongſt other

^p P. 743. pl xlv. an^o 1247. Advenerunt illuc excepta baronum, militum, nobilium, nec non abbatum, priorum, clericorum, etc. novem episcopi, etc. ^a Magna charta, c. xxxvii.

^r Spelman Concil. p. 627. Conventus celeberrimus.

^s Comitibus, miniſtris (ſeu thanis regis) et militibus.—5 R. 2. c. iv.

things, to cause to come to the king, to conferre with him about the affayres of the kingdome, "four discreete knights of his countey"; the very words which are used in the writ for electing knights, etc. att this day to serve in parlement. And in the same manner writs were directed to all the sherifs. And this meeting att Oxford is by Selden stiled a kind of parlement, which, he saith, king John then summoned". Butt of the antiquity of commoners being members of our supream publique councells, and long before 49 H. 3. occasion will be given to discourse in another place. Yett neither of the certaine commencement therof, or of the election of them, or of the manner of such election wherein many changes have bin made, will it be easy to define any thing so exactly, butt that it will still remaine lyable to some objections. This may be without difficulty asserted, that in England there have bin popular elections of great officers, and of members of our parlements, very antient. And therein some resemblance may be noted to the usages of the Hebrewes, as in that election of our heretoches and sherifs, and other officers who were judges, to that passage in Deuteronomy; "Take ye wise men and understanding, and known among your tribes, and I will make them rulers over you". The originall which is translated (take ye) doth beare the sence of (give ye) which implyes an election by the people; and that these magistrates, who were the rulers of thousands, of hundreds, of fifties, and of tenns, were elected by the people, is the opinion of Menochius; and that they were named and prescribed to Moses by the people who best knew them*. Uppon this text in Deuteronomy Ainsworth saith, "Give ye of your own looking out, and choice". So ministers were lookt out, and presented by the people. Oleaster comments uppon the same text, "that the prince

* 15 Jo. regis rot. clauf. p^t ii. m. 7. dorf. Quatuor discretos milites de comitatu hic venire facias ad nos ad loquendum nobiscum de negotiis regni nostri.

hon. p. 710.

^w Deut. i. 13.

^x Col. xxxviii.

^y Ainsworth in Deut. i. 13.

ought not to sett over the people, for their governors, whom he pleaseth; butt such as the people desire, and present unto him ^z."

That these rulers among the Hebrewes, thus elected or given by them, were magistrates and members of their publique judicatories and councells, is not disputed. And besides these elections, we find mention of deputies of the congregation, which our translation reads; "these were the renowned of the congregation, princes of the tribes of their fathers, heads of thousands in Israel ^a." The arabick version of this text is rendred; "these are the most named men of the assembly, the most noble of the tribes of their fathers, heads of thousands, etc ^b." Butt more expresse is the samaritan version thus rendred; These were deputed by the congregation, princees of tribes, heads of thousands ^c, etc. which shoves that they had their deputies, and those appointed by the congregation, which must be by the peoples election; and these (as hath bin noted) were members of their publique councells: and it will be difficult to find out another exposition of severall texts of holy scripture. Philo speaking of the judges of the Hebrewes saith, that the power of judging was given them either by lott, or suffrage ^d; which must be by election. And of this opinion is Selden, that there was a manner of gathering or choosing of elders or members of the great sanhedrim, who I thinke (saith he) were sometimes chosen as well by lott, as by suffrage ^e. In most countryes they used an election, by the people, of their judges and senators. The Graecians and Romans practised it. In Ger-

^z Acts i. 15. 23. & vi. 3. 5. 6.—Non debet princeps populo quos voluerit ipse prae-
ficere, sed quos populus petierit et obtulerit. ^a Num. i. 16.

^b Isti sunt nominatissimi coetus, nobilissimi tribuum patrum suorum, capita millium.

^c Hi fuerunt deputati a congregatione principes tribuum, capita millium, etc.

^d Lib. Περὶ δικαστῶν τῆς λαχόντας ἢ χειροποιήθεντας διαλέγειν.

^e De synedr. lib. ii. c. vi.

§. 3. Tam sorte quam suffragiis interdum cooptati sunt presbiteri opinor.

many,

many the cittyzens choose their deputies, to serve for them in their generall diettes. In France, when they had the liberty of holding the assembly of estates, the deputies of the clergy, and of the commonaltie, were elected by suffrage of the people, within the respective praecincts for which they served: so saith Pasquier, "they were to elect and depute certain persons of every order," etc. The like order is mentioned to have bin in Gaule in the time of the Druydes, that then in their diettes or publique councells they had "persons elected" by them for that service^f. Att this day in Swethland the proctors of the clergy, the deputies of the burghs and cittyes, and of the boores are elected by the respective inhabitants of the severall praecincts, for which they serve as members of their ricksdah; and so it hath bin with them beyond memory, or mention in their stories of the beginning therof: which may be some argument of the originall of the like usage with us, and in severall other kingdomes.

^f Recherches, p. 82. Qu'ils deputassent certains personages de chaque ordre.—Ib. p. 7. Gens choisis.

C H A P. XLII

Freely and indifferently.

ALL elections ought to be made freely and indifferently; none more requires freedom and indifferency than this of members to serve for us in parlement, who have putt into their hands the power of our estates, of our liberties, of our lives: and therefore it is butt reason, that those who are so much concerned, in the determinations of the persons who shall be elected, may have a free and indifferent choyce of them. Elections which are not freely, and indifferently made, will be like that of the trees of the wood, who did not choose the olive, nor the figge tree, nor the vine, butt elected the bramble for their king; and a fire came out of the bramble, and devoured the cedars of Libanon^a. So when the ablest and worthiest persons are omitted, and the meaner and lesse worthy brambles chosen to high employments; the rights and safety both of prince and people will be in daunger to be consumed.

The law of England takes great care, that the election of members to serve in parlement be free and indifferent. Walsingham relates, that 10 R. 2. the king called the sherifes, justices, etc. to Nottingham, where it was proposed to the sherifs, that they should not permit any knight of the countey to be chosen to the parlement, butt such as the king and his counsell should appoint; unto which the sherifs answered, "that the commons would keepe their old customes, which will that the knights be elected by the commons^b."

^a Petr. Ravius. in epist. ^b Ypodigma Neustriae, f. 541, p^r x.—Communes velle tenere consuetudines usitatas, quae volunt ut à communibus milites eligantur.

And it was objected against this king in parlement, that although by the statutes and customes of the kingdome, in the calling of every parlement, the people in every countey ought to be free to choose and depute knights to be in the parlement; yett the king, to the end he might the more freely gaine in parlement the effect of his rash will, did often direct his mandates to the sherifs, "that they should cause to come to the parlement, as knights of the shires, certaine persons named by the king^c:" wherby things prejudiciall to the kingdome, and burdensome to the people were ordeined.

In the next king's reigne, att the complaint of the commons, it is enacted, that the people shall proceed to the election freely and indifferently; notwithstanding any request or commaundement to the contrary^d. In 4 H. 4. the Percies, and other conspirators against the king, framed objections against him; amongst which one was, that no justice could be expected att his hand, bicause (contrary to the oath which he tooke att his coronation) he had by letters, written and sent into sundry shires, procured certaine burgesships for the parlement, all which he bestowed uppon such as would not fayle to serve his turne^e. In the reigne of his grandchild H. 6^f. we are informed of a favourable act, which the abridgement of the parlement rolles doth mention, butt I cannot find it in the record att large. The abridger reports it to this effect, that such members of the commons as were returned by virtue of the king's letters, without any other election, should be good. This (if not mistaken) is some argument indeed against free and indifferent elections. Butt that it is greatly mistaken should seeme by the record att large in

^c 1 H. 4. rot. parl. n. 36. Ut certas personas per ipsum regem nominatos ut milites comitatum venire faciant.

^d Stat. 7. H. 4. c. xv.

^e Martin's Chron.

p. 170. ^f 39 H. 6. rot. parl. n. 35.

the same year^e. Wherin is recited, "that a parlement att Coventrye was held the yeare before, which was unduely summoned; and a great parte of the knights cittizens and burgesſes for divers ſhires cittyes and burghs, appearing in the ſame, were named, returned and accepted, ſome of them without due and free election, and ſome of them without any election, againſt the courſe of your lawes, and the liberties of your commons of this your realme, by means and labour of the ſayd ſeditious perſons: wheruppon hath inſued many great jeopardies, and inconveniences, full neere to the ruine and univerſall ſubverſion of this your ſayd realme. Pleaſe it your highnes to conſider the premiſſes, and to ordeine, that the parlement att Coventry be voyd, and taken for no parlement; and all acts and ordinances there made be repealed:" which the king graunted^h. So careful were our auncetors to preſerve the freedome of elections, which the king's graunt cannot reſtraine: as where an antient borough, which formerly elected burgesſes to the parlement, be newly incorporated with a graunt that certaine ſelected burgesſes ſhall make the election, where before all the burgesſes did elect; this new graunt taketh not away the right of election of the other burgesſesⁱ. And ſo if a city or borough hath power to make ordinances, they cannot make an ordinance that a leſſe number ſhall elect cittizens or burgesſes for the parlement than did before; bicauſe free and generall elections of members of that court are favoured by law, being for the publique good: butt by originall graunt where no election was before, or by cuſtome, a ſelected number of burgesſes may elect, and bind the reſidue. In moſt parlements where I have ſerved thirty years together, whenſoever any queſtion came about the freedome of elections, I have obſerved the inclination of

^e 39 H. 6. rot. parl. n. 8.
p. 48, 49.

^h Le roy le voet.

ⁱ Coke 4 Inſtit.

the house of commons to favour the popular elections, judging the more free and indifferent the election is, the more it is for the freedom and interest of the commons; wherof many precedents and judgements are in the journals of that house: and before the statute 8 H. 6. which restraines elections to be by freeholders of 40 shillings per annum only, all the freeholders generally had their votes in those elections; and att this day, in antient cittyes and boroughs, for the most part the elections still remaine popular and free by all the inhabitants, except almes men and such like; and so it was resolved in parlement^k (amongst many others) in the case of Merlow Magna in Buckinghamshire, to which borough I do owe perticular respect and service.

We find some restraint as to members of the lords house, by dispensations graunted to some peeres, not to attend in parlement: as where the king graunts to James de Audlegh de Helegy, that during life “he be discharged from comming to parlement, and councells of the king and his heirs, and to assemblies of great men and peeres, att the commaund of the king^l.” And in the creation of the abbot of Tavistocke, by patent, is the like dispensation: and in severall other cases, as of the lord Beauchampe, the lord Vescey, and others^m. Yett such charters are held to be voyd: and that a charter of exemption cannot be graunted to any man, not to be chosen a knight, cittizen or burgesse of parlement, because the election of them ought to be free and indifferent; uppon

^k 16 Car. 1. ^l 39 E. 3. rot. claus. m. 31.—23 E. 3. rot. pat. p^t i. m. 13.—
*Quietus sit de veniendo ad parliamentum et concilia regis et haeredum suorum, et ad
 congregationes magnatum et procerum, ad mandatum regis.* ^m 5 H. 8. rot.
 pat. p^t ii. m. 22. et 11 E. 3. rot. parl. p^t i. 1 E. 4. rot. pat. m. 15. 2 E. 4. rot.
 pat. p^t ii. m. 2.

which ground a charter of exemption that H. 6. gave to the cittizens of Yorke, from being cittizens for the parlement, was declared voidⁿ. And where any restraint or exemption is, the freedome and indifferency of the election is restrained, and lessened; which the law will not permit: in so much as if any party in competition, or the freeholders electors doe uppon the election demaund the polle, the sherife cannot deny it; and though the demaunders of it doe afterward waive it, yett the sherife must proceed in the scrutiny; so tender of the freedome and indifferency of elections is the law of parlements^o. And as it permits no exemptions, or restraints against the freedome of it: so it forbids sollicitations, bribings, or gratifying of sherifs, head officers or others by any person, or giving money or rewards (it were well if it extended to drinke and intertainements) to freeholders or inhabitants to obtaine their suffrages, or to procure one to be elected; and in such cases, prooffe being made therof in the committee of priviledges, and by them reported to the house of commons, a member obtaining his election by such undue, and unworthy means, will be throwne out with disgrace, and the election adjudged voyd; as it was in the case of Thomas Long^p, who gave the major of Westburg four pownds for his assistance to gett him to be elected burgesse for that towne in parlement, who was theruppon elected. Butt the matter comming to be examined and proved, the house of commons adjudged the major to be fined and imprisoned, and Long was putt out of the house. In like sort all force disturbances and menaces, which interrupt the freedome of elections, are punishable: as in the case of Sir John Savil, Thomson sherife and Henlee alderman of Yorke, for misdemeanors in the election hindering the indifferency and

ⁿ Co. 4 Inst. p. 49.—P. 3. E. 3. f. 19. tit. Coron. 161. ib.—Stat. 29 H. 6. c. iii.

^o Co. 4 Inst. p. 48. ^p Journall booke of the house of commons, 8 Eliz.

freedome therof, were committed to the sergeant att armes; and ordered to acknowledge att the barre their offences, and to make a submission in the citty of Yorke^a. In the same parlement Loughton, Trelawney, and Sir William Wraye were committed, and ordered by the house of commons to acknowledge their offences att the barre, and att the assises in the countrey: and their crime was the writing of menacing letters to Sir John Elliot, Coriton, and others of Cornewall, disturbing their election, and contemning the warrant of the house wherby they were summoned to attend them. And of this nature fundry other precedents might be mett with, testifying the care, and judgement of our parlements, for the free and indifferent election of their members; wherunto all sollicitations, canvassings, bribings, intertainements and courting of people, to gain their voyces, is an adversary, and of a meane extraction. It was one of the great defects in the Roman state, that they permitted the candidate, so called from the white gownes^r which they wore to be distinguished, so much and so unworthily to sue for offices^s; so that four things were expected from them: 1. The saluting of every cittizen by his name, for the better discharge wherof they had a follower^t who told them the cittizens names as they passed by, and this prompter was called Nomenclator^u; 2. A friendly compellation by the addition of some complementall name, as, well mett friend! brother! father! etc; 3. A hott canvassing or solliciting men without intermission; 4. A bountifull or liberall largesse, or dole, sometimes of money other times in providing great feasts and magnificent shoves for the people, who were thus tyed by the teeth or hands, (a base obligation!) to give their suffrages for him who thus

^a Parl. Journall booke of house of commons, 3 C. 1. Apr. 1628.

^r Candidati à toga candida.

^s Ambire magistratum.

^t Rosin. An-

tiq. Rom. lib. vii. c. 8.

^u Cicer. Orat. pro L. Mut.

bespeaketh them, and who is commonly the lesse worthy of im-
 ployment the more he seekes for it. All deserve not honor and
 offices who desire them; and all who merit them doe not seeke for
 them. It may prove prejudiciall to this kingdome to follow the
 precedents of the candidati too farre: it caused in Rome too much
 of ambition, faction, promotion of unworthy men; and, in con-
 clusion, those miseries which their civill dissentions brought upon
 them, common daunger, and peticular oppressions.

By those who shall be present.

ELECTIONS cannot be made butt by the personall presence of the electors: yett suffrages in councells are sometimes admitted to be by proxies. As in the lords house in our parlements, where the peeres have usuallly deputed some of their fellow members to be their proxies, that is, to have their votes: and which way the proxie in his judgement holds fitt to give his owne suffrage, and his also for whom he is proxie, so many votes are given in that opinion. Butt this is a priviledge and usage peculiar only to the peeres of England, who fitt in their owne right, and (as Coke observes) for themselves only^a: and so the princes of Germany often send their ambassadors or proxies to their generall diettes, whose actions are of the same force, and as much binding as if they were done by their principalls. Butt in the house of commons no man can make a proxie, bicause they represent others, and are in effect but proxies or deputies themselves: much lesse can those who have votes in the election of knights, cittizens and burgeses for the parlement, depute this right and priviledge to another; butt must be present att the election, and give their suffrage themselves, if they will have the benefit therof allowed to those for whome they give it.

Being all present in the place where the election is to be made, they proceed therein according to the usages, or such agreements as

^a 3 C. 1. In communi domo parliament, per Coke,

shall be concluded on amongst themselves touching the manner of the election, which in some places is after one way, and in other places after another way; butt in all those wayes the parties acting as to the election must be present.

Sometime a way of election hath bin used by a kind of scrutiny, in writing the names of the persons whom they would have to be chosen in severall papers, and none to know who wrote the paper; butt they who were written most often, carried the election.

The way which Moses used in gathering and electing the 70 members of the sanhedrim, at the first institution of it, is thus described. When God sayd unto Moses, "Gather unto me seventy men," etc. Moses thought with himselfe, how shall I doe this? If I choose fixe out of every tribe, there will be two more than the number commaunded, they will be 72; and if I choose five out of every tribe, there will be ten wanting of the number commaunded, there will be butt 60: and if I choose five out of one tribe, and fixe out of another, that will rayse envy among the tribes. What did he doe then? He chose fixe out of every tribe, and made 72 schedules; in 70 of them he wrote the word which signifies presbiter or elder, in the other two schedules was no inscription; these, mingled together, were putt into a boxe or urne (as the course was usuall among them): then, all the 72 persons being present, Moses said to them, come, and every one take his schedule; then he that drew a schedule with the word presbiter written in it, to him Moses sayd, the Lord hath sanctified thee; and to him that drew a schedule without any inscription, Moses sayd, the Lord will not have thee. And thus (saith the Gemara)

Gemara) were the 70 members chosen of the Jewish sanhedrim^b: and this way of schedules, as likewise other wayes in manner of lotts, were used for the election of magistrates and of members of publique councells. Sometimes to prevent difference and heate of faction, lotts have bin used with us in elections. So they were amongst the Hebrewes^c.

The senators at Athens were chosen by lott; so were most of their magistrates; and some by papers in manner of schedules, like unto those before noted. Gothofred sayth of their elections, "that the Athenian magistrates were chosen either by lott, or little stones," etc. He saith that the 50, added to the Prytanes, "were created partly by lott, and partly by election; and that the Graecians, in giving their suffrages, did not use little stones, butt white and blacke beanes^d:" and the very electors themselves were chosen by lott (as att this day among the Venetians) by casting their lotts into an urne. And the senate were in like manner elected: whence that of Thucidides^e is said, the senate of 50 were chosen by lotts of the beanes; he to whom the white beanes fell was elected, he to whom the blacke beanes were given was repulsed.

The Venetians make all their elections, passe their resolutions, and choose their magistrates by a way not unlike to those of lot-

^b Gemar. Babilon. ad tit. Sanhedr. c. i. f. 17. 1.—Num. xi. 16.—*וְכָל*

^c Sorte cooptati. De synedr. lib. ii. c. 6. §. 3.—Philo lib. *Περὶ τῆς διακρίσεως*.

^d Gothofredus lib. i. p. 699. Magistratus Atheniensium legebantur aut sorte, vel calculis, etc. P. 700. Partim sorte partim electione creati fuerunt. Utebantur Graeci in ferendis suffragiis non calculis, sed fabis, iisque vel albis vel nigris.

^e *Τοὺς λαχόντας τῷ χυάμῳ.*

tery, which they call a balloting boxe: and it serves to conceale their judgements, and preserve the freedome and indifferency of their elections^f.

In London, and other places, the manner of their election is by holding up their hands, when he is named whom they would choose. Some hold that to allude to it which is in the prophecy of Ifaiah, of putting forth the finger; which the Greeke reades “holding up the hand.” The Graecians also had that manner of giving their suffrages, by holding up their hands, which they called by the same word which is used in that text of Ifaiah^g.

Butt the most usuall way of election is by the peoples voices, crying up the names of those whom they would have to be elected; and the sherife or head officer is to judge who hath most hands or most voices, and determines it accordingly. Some hold this to be a resemblance to that passage where, Saul being elected to be king, all the people shouted, and sayd God save the king^h. And the like of Adoniah. And these shoutings and acclamations of the people are frequent uppon such occasions. The Lacedæmonians also used the like manner of elections, giving their suffrages not by small stones, butt by crye and voice, after the manner of oursⁱ.

In what manner soever the election be made, whither by schedules, by lotts, by holding up of hands, or by voices of the persons

^f Gothofredus, lib. i. p. 21.
lib. I. col. 51.

^h 1 Sam. x. 34.

^g Isa. lviii. 9. Χειροτονίαν. Menochius,

ⁱ Cragius, lib. i. De rep. Lacedæmon. c. viii.—Thucidides, lib. i. Βοή καὶ ὁ ψηφισμός.

who are present upon the place att the time of the election ; the high sherife or head officer is the judge who hath most lotts or hands or voices : and if the polle be demaunded by any of the competitors or electors, it ought not to be denyed ; butt then upon examination of every elector's capacity, and setting downe their names, the greatest number of them carryes the election.

C H A P. XLIV

At such proclamation.

OF the proclamation of this election, and of proclamations in generall, somewhat hath bin sayd before, and the lesse will be now expected. The proclamation heere intended is usually no other buisnes butt the speaking aloud of one, who performs the office of cryer in the audience of the people there assembled, to charge them to keepe silence whilest the king's writ is reading for the election of knights, cittizens and burgessees, to serve in parlement for that countey: then the writ is publicuely and audibly read; and after that done the cryer, in the sherif's name, wisheth the freeholders there present to proceed according to the writ, to the election of knights to serve in parlement for that countey; which is done accordingly by the freeholders who are present att such election. And none other can legally give their votes to such a choyce, butt those only who are present att the proclamation made: so that some doe hold, if a party of freeholders be brought into the place of election after the proclamation made, and who were not present att it, that this exception to their votes being taken att the polling, those freeholders who came thus in after the proclamation ought to be sett aside, not being persons capable by the writ to make the election. And by the same reason that they may be admitted comming in halfe a day after the proclamation, they may as well be admitted to have their votes comming in to the election ten dayes after the proclamation made, for so long in some countyes

the polling may be continued; the which would be full of inconvenience both to competitors, and to all the freeholders concerned in that election. But these periods are more proper for the determination of a committee of priviledges of the house of commons, than for any single pen.

CH A P. I. The proclamation of this election, and of proclamation is generally, somewhat half day before, and the day will be now expected. The proclamation here intended is not only no other better than the polling about of day, who have found the office of clerk in the audience of the people, there assembled, to charge them to keep silence whilst the king's writ is reading for the election of knights, citizens and burgesses to serve in parliament for that county; then the writ is publicly and audibly read; and after that done the clerk, in the clerk's name, with the freholders there present to proceed according to the writ, to the election of knights to serve in parliament for that county; which is done accordingly by the freholders who are present at such election. And none other can legally give their votes to such a choice, but those only who are present at the proclamation made; so that some do hold it a party of freholders be brought into the place of election after the proclamation made, and who were not present at it, that this exception to their votes being taken at the polling, that freholders who came thus to after the proclamation ought to be left able, not being persons capable by the writ to make the election. And by the same reason that they may be admitted coming in before a day after the proclamation, they may as well come to have their votes coming in to the election any day after the proclamation made, for so long in some counties the

According to the forme.

ELECTIONS of knights cittizens and burgesſes, to ſerve in parlement, are to be made in ſuch a manner as the law directs: they ought to be according, agreeable to the forme, that is, the effect and praefcript which the lawes commaund.

The Latine word heere uſed, “juxta,” which we tranſlate according, doth ſignify “the very ſame” with that which it relates to; as Plautus uſeth it, “thou art of the very ſame opinion with me^a:” ſo “according to the forme” muſt be the ſame with the forme; juſt as the forme is, ſo muſt the election be. Butt what is meant heere by “forme?” The word hath various ſignifications; ſometimes it is taken for beauty, as in that of Horace relating to Ajax.

Ajax was moved with the grace
And beauty of Tecmeſſae's face^b.

It is taken alſo for an idea of a thing conceived in our minds, as a forme of honeſty. A forme is alſo an inſtrument or veſſell wherein a thing is putt: alſo for the ſpecies the rhetoricians uſe it, as in Quintilian, “there are (ſaith he) two formes (that is two kinds) of abdication^c.” The forme of a province ſignifies the limits of it; the forme of a building is the delineation of it. Butt in the uſuall acception of the word according to our law expreſſions, when we ſay the forme of a charter we meane the effect of it, the matter con-

^a Juxta mecum rem tenes.
etc.

^b 2 Carm. Forma captivae dominum Tecmeſſae,

^c Lib. vii. c. 5. Abdicationum formae ſunt duae.

teined in the charter, the full and cleere directions of it; so when we say a thing shall be done according to the forme of a statute we intend, that the rules and directions, enacted and praescribed by that statute, shall be exactly pursued and obeyed in the execution of them.

The statute of Westm. 2.^d gives reliefe in cases of intayles: the writ theruppon is called a formedon in our law-phrafe, because it is grounded uppon the forme of the guift in tayle, which is to be strictly observed.

So the formes, the directions of those statutes which concerne elections, must be strictly pursued, and exactly executed by the sherife: he being, by this writ, commaunded to cause the election to be "according to the forme" of the statutes; of which statutes we shall take a view in the next chapter.

^d Cap. i.

C H A P.

C H A P. XLVI

Of the statutes therof.

STATUTES are acts of our parlements, the lawes made by the king with the assent of his lords and commons in parlement assembled^a. And “the statutes therof,” that is, concerning the election of knights cittizens and burgeses to serve in parlement, are divers, according to which the sherife and other ministers of lawe are to proceed in these elections. The first of this nature, which I meet with, was the petition of the commons, 50 E. 3. that a parlement may be holden every year^b; the knights of the parlement may be chosen by the whole counties; and that the sheriff may likewise be without brocage in court. To this the king answears to the parlement, there are statutes made therefore; to the sheriffs, there is answear made; to the knights it is agreed, that they shall be chosen by common consent of every countey.

Shortly after, in his grandchild's reigne^c, a statute was made, that all persons and commonalties, that shall have summons of the parlement, shall come as they be bound to doe, and have bin accustomed of old times; and if any lord, knight, cittizen or burges absent himselfe, and come not att the summons (except he may reasonably and honestly excuse him to our lord the king) he shall be amerced and otherwise punished, according as of old times hath bin used to be done; and if any sherif be negligent in making his returnes of

^a Co. on Litt. f. 11 & 126.

^b 50 E. 3. rot. parl. n. 177.

^c 5 R. 2. c. 4.

writs of the parlement, or leave out of the returnes any citties or burroughs which be bound and of old times were wont to come to the parlement, he shall be amerced or otherwise punished as was accustomed in the sayd case in times past.

In 1 H. 4. it was one of the objections against king R. 2. that he procured knights of the shires to be made to serve his own will^d.

8 H. 4. the commons exhibit articles to the king, which the lords of the councell were sworne to observe; one was, that all the sherifs, before the election of knights of the shire shall, by open proclamation in their countyes, appoint fifteene dayes respite, the day and place^e.

In the same year, butt in the printed booke of statutes it is in the year before, this act is made^f. "Att the grievous complaint of his commons, in parlement, of the undue election of the knights of countyes for the parlement, which be sometime made of affection of sheriffs and otherwise against the forme of the writs, to the great flaunder of the counties, and hinderance of the buisnes of the commonaltie in the said countey; the king willing to provide remedy, by assent of the lords and commons, hath ordeined that the elections of such knights shall be thus made: att the next countey [court], to be holden after the delivery of the writ, proclamation shall be thus made in the full countey of the day and place of the parlement; and all those present shall attend to the election, which shall be freely and indifferently, notwithstanding any request or commaundement to the contrary." Then the act appoints the indenture, the

^d 1 H. 4. rot. parl. n. 37.

^e 8 H. 4. rot. parl. n. 83.

^f 7 H. 4. c. xv.

tacking of it to the writ for the returne, and the clause for certifying it into the chancery.

This act is recited in the statute 11 H. 4. and that no penalty was therein ordeined uppon sherifs if they make returnes contrary therunto: this statute ordeins, that the justices assigned to take assises shall have power to inquire, in their sessions of assize, of such returnes made; and if it be found by inquest and due examination before them, that a sherife hath made any returne contrary to that act, the sherif shall incurre the penalty of 100l. to the king; and the knights so unduely returned shall loose their wages.

The statute 1 H. 5^h. confirms the former statutes of election, adjoyning, that the knights be not chosen unlesse they be resiant within the shire, where they shall be chosen, the day of the date of the writ of summons; and that the knights, and esquires, and other which shall be choosen of the said knights of the shires, be also resiant within the same shires; and that the cittizens and burgessees be chosen men, cittizens and burgessees resiant, dwelling and free in the same citties and boroughs, and no other in any wise.

A statute made 6 H. 6^h. recites the statute of 7 H. 4. and the statute of 11 H. 4. which this statute of 6 H. 6. saith was mischievous to the sherifs and knights which be forebarred, and putt out of their answear; and ordeins that the sherifs, and the knights then elected or who shall be thenceforth elected, shall have their answear and traverse against such inquests and offices, before any justices to be taken; and the said knights and sherifs shall not be

^a 1 H. 5. c. i.

¹ 6 H. 6. c. iv.

indamaged against the king or his successors by any such inquest, till they be duely convict by the forme of the law.

Another statute was made 8 H. 6th. reciting, "that wheras the election of knights of shires to come to the parlement, in many counties have now of late been made by very great, outrageous, and excessive number of people dwelling within the same counties, of the which most part was of people of smalle substance or of no value, wherof every of them pretended to a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling in the same counties; wherof manslaughter, riots, batteries, and divisions among the gentlemen and other people of the same counties, shall very likely rise and be, unles due remedy be provided. The king ordeins, by authority of the parlement, that the knights of shires shall be chosen by people resiant in the same counties, wherof every one shall have land or tenement to the value of forty shillings by the year, att the least, above all charges; and that they who shall be chosen shall be dwelling and resiant within the same counties; and such as have the greatest number of them that may expend forty shillings by year, and above, shall be returned, by the sherifs, knights for parlement, by indenture sealed betwixt the sayd sherifs and the sayd choosen: and every sherif shall have power to examine, uppon the evangelists, every such chooser, how much he may expend by the yeare; and if any sherife returne knights contrary to the said ordinance, the justices of assise shall have power therof to inquire, and if by inquest the same be found, and the sherife therof be duely attainted, he shall incurre the peine of 100l. to the king, and imprisonment by a yeare without baile;

* 8 H. 6. c. vii.—Par trop grande et excessive nombre des gentz, etc. So the French original in the edition of 1763. Vol. i. p. 544. (M)

and

and the knights returned contrary to the sayd ordinance shall loose their wages. Provided, that he which cannot expend 40 s. by year, shall in no wise be chosen of the knights for the parlement; and that in every writ, that heerafter shall goe forth to choose knights, mention be made of the sayd ordinances."

In 10 H. 6¹. the statute of 8 H. 6. is recited, and explained att the request of the commons, that the choosers of knights shall be dwelling and resiant in the same countey, and to have freehold to the value of 40 s. by the year att the least, above all charges, within the same countey where any such chuser will meddle of any such election.

In 18 H. 6^m. which is not printed, the sherif of Cambridge having made no returne for the knights of that countey, the parlement ordered, that he should goe to a new election, and make proclamation, that no person should come armed therunto: a good note to be generally observed on the like occasions.

In the 23 year of this king", a long statute is printed, reciting the act of 1 H. 5. c. i. and that of 8 H. 6. c. vii. and "that of late divers sherifs, for their singular availe and lucre, have not made due elections of knights, nor in convenient time, nor good and true returnes, and sometimes no returns of knights, citizens and burgeses lawfully chosen; butt have returned such as were never duely chosen, and other cittizens and burgeses, than those which by the majors and baylifs were returned to the said sherifs; and sometimes the sherifs have not returned the writs, but imbefilled them; and made no praecept, for election of cittizens and burgeses; and for want of penalty against the sherifs, mayors and bailiffs, for the party

¹ 10 H. 6. c. ii.

^m 18 H. 6. rot. parl. n. 19.—Ne ount faitz—Ne bons et verroiez retournez. Vid. ubi supra, p. 613. (M)

ⁿ 23 H. 6. c. xv.

grieved : it is ordeined, that the former statutes be kept in all points ; and that every sherif, after the delivery of the writ to him, shall make and deliver sufficient praecepts to the majors and baylifs, to chuse cittizens and burgeses in that countey where they are to be chosen, which shall be returned to the sherifs, by indentures, which the sherifs shall returne : and if they doe contrary to this, or any other statute for elections, for every time, they shall incur the paine contained in the statute 8 H. 6. and moreover to every person chosen, and not returned, 100 l. if he, or any other in his default will sue for it, by action of dett, with costs against the sherife his executors or administrators : and in the same manner, for an undue returne of a cittizen or burges, the major or baylifs shall forfeit 40 l. to the king, and 40 l. more to the party chosen and not returned, and to any who in his default will sue for it, by action of debt as before. And every sherif that makes not due election of knights, in full countey, between the hours of 8 and 11 before noone, and that maketh not true returne of such elections, shall forfeit 100 l. to the king, and 100 l. to him that will sue for it by action of debt as before. Every party chosen, and not duely returned, shall begin his action within three moneths after the parlement commenced, or else another may sue : and if any person be returned by the sherif, and after be putt out and another putt in his place, he so putt in shall forfeit 100 l. to the king, if he take uppon him to sitt, and 100 l. to the party putt out if he sue for it, by action of debt, etc. within three moneths after the parlement commenced ; or, in his default, to any other that will sue for it. So that the knights of the shires for the parlement, heerafter to be chosen, shall be notable knights of the same counties for the which they shall be chosen ; or otherwise such notable esquires gentlemen borne, of the same counties, as shall be able to be knights ; and no man to be such knight, which standeth in the degree of a yeoman and under.

Uppon

Uppon this statute some actions have bin brought, and resolutions given by our judges: as in Bulkley's case, that this statute extends to elections in Wales; and in some other cases, in our bookes of reports °.

In 35 H. 8. it is enacted^p, that in the 12 shires in Wales, and in Monmouthshire, the burgeses of every of the citties, burroughs and townes, which be contributory to the payment of the wages of the burgeses for the shire townes, shall be lawfully admonished by proclamation, or otherwise, by the head officers of the said townes, to come and give their voices for the election of the burgeses of the shire townes; and shall have like voice and authority to elect burgeses of the shire townes, in like manner as the burgeses of the said shire towns have or use.

There be severall other statutes relating to the wages of knights, cittizens and burgeses for the parlement, and to their priviledges; butt not being necessary for the sherif's notice as to the buisnes of the election, which is that intended by the writ when it expresseth "according to the statutes therof," those statutes only pertinent therunto are heere noted; and others, as unnecessary for this occasion, are omitted.

° Dyer f. 113. 168.—Plowden's Com. f. 118;

^p 35 H. 8. c. 11.

Made and provided.

TH E chancellor Fortescue thus describes how statutes (which he calls constitutions) are made and provided. He saith that customes and the sentences of the law of nature, after that they were once putt in writing, and by the sufficient authority of the prince published, and commaunded to be kept, were changed into the nature of constitutions or statutes; and did after that, more penally than before, bind the subjects of the prince to the keeping of them by the severity of his commaundement; and of this sort (he saith) are the most part of the civill lawes, which are called the statutes of the emperors^a, and properly, the Latine word statutum being rendred, a thing certainly determined, a decree, as the lawes of the emperors were: and with this agrees Coke's derivation of the making of statutes, that is, making of decrees^b. And Lindwood holds, that "the making of statutes implyes perpetuity^c;" it remaines a decree unalterable, butt by the same power that made it: and in another place he saith, that the written lawe, statute, and custome are equall^d.

Our lawe's oracle, Littleton, taketh a statute or act of parlement to be signified by the word ordinance; and in the making of most statutes it is sayd, "Be it ordeined^e." The making of statutes is by the king, with the assent of the lords and commons, in parlement,

^a De laudib. leg. Angl. f. 36.—Statut. imperatorum.

^b Co. on Litt. f. 126.

^c F. 21. dorf. E. Statuimus perpetuitatem significat.

^d F. 36. dorf. R.

^e §. 234. Co. on Litt. f. 159. b.

and hath the force of a law. In the same sence, of a written lawe, it is taken in the holy scripture ; as, “ the statutes which he wrote for you,” that is, which he made for you, you shall observe to doe^f.

In some speciall notes of my honoured father, I find this distinction of our lawe made by him. Our lawes (saith he) are all of two sorts. 1. Lawe positive, and this is the common lawe of the kingdome, and is an unwritten lawe ; for it is a customary lawe, which was never commaunded or inforced, butt meerly customary introduced from the manners of men^g, and hath no record or history of the beginning of it, nor by nature can it have ; for if there were any knowledge of the beginning of it, it could not be customary. This law is now in part “ reduced into writing^h,” by often judgements given by it, which are those we call the year bookes ; butt it is evident, the law was so before, and those judgements were given according to that lawe : and this reporting of those customes, or not written lawe, altereth not the nature of that lawe, nor maketh them to be written lawes where before they were unwritten lawes ; for in some writs brought now grounded uppon the antient common lawe of the kingdome, notwithstanding there are many judgements of record and have bin for many hundred years in the point, and those resolutions by the judges of the lawe in those points reported long since in writing in the reports of our yeare bookes, yett the writ is, “ Wheras according to the common custome of our kingdome of England ;” so that the reports and the records of judgements in those cases, although they be “ written testimonies of the laweⁱ,” yett

^f 2 Kings xvii. 37.

^g Jus Angliae positivum, praeceptivum—Lex non scripta, jus consuetudinarium ex moribus hominum introductum, mere consuetudinarium.

^h In scriptum redactum.

ⁱ 34 H. 8. Br. Customes 59. Cum secundum legem et consuetudinem regni nostri Angliae, etc.—2 H. 4.—Testimonia scripta legis.

they doe not alter the nature of those lawes, to make them written lawes where before they were customary, butt they continue unwritten lawes still; and so hath our positive or common law bin from all antiquity, wherof Caesar maketh mention. Speaking of the Druydes, the great lawyers and judges in Brittain and in Gaule in that time, he saith, “that their lawes and judgements they held not lawfull to commit to writing: and that seemes to me for two causes to have bin instituted, that neither their learning should be knowne to the vulgar; nor those who are learners, trusting to writing, should the lesse confide in their memories^k.” Thus it appears, by Caesar’s owne testimony, to have bin in his time. And these lawes positive now used in England are the antient home borne native lawes^l of this island; and are for the most of them the same that they were att the first being of any commonweale in this island, and have bin little or nothing altered by the incursions of conquerors, and the often change of the state and policy; butt so soon as there was a civill society heere, and a commonwealth, the lawes were heere also, for they were “the very cementing therof^m”; and it is therefore a commonwealth, bicause the people consent to one law and government: butt heerof there may be occasion to discourse more largely heerafter. Doubtles this positive common lawe is not a lawe made and provided, not a written lawe, as our statutes are. And antiently the students of this lawe, under the reverend sages of it, were like the schollars of the Druydes, they had no matter of writing to help them: for untill reports began to be made, wherof there were almost none till E. 3. time, there was nothing for them to reade except some few records; and that which is now, though it have bin in

^k Caesar. Comment. lib. v. De Bello Gall. Neque fas esse existimant ea litteris mandare, etc. Id mihi duabus causis instituisse videntur, quòd neque in vulgus disciplinam efferri velint, neque eos qui discunt litteris confisos minùs memoriae studere.

^l Leges indigenae.

^m Ipsa compago reipublicae.

latter times much increased, is butt a few volumes, and not the hundredth part of that which is in other professions, especially the civill and canon lawes.

It is true, that since the reigne of our king H. 7. the parlements have made and provided many more and larger statutes than were by their auncestors, who used not to make many lawes, and those which they did make were commonly in short and cleer expressions; so that sometimes many statutes, if not all the lawes made in the whole reigne of a king, tooke not up so many leaves as one statute in H. 8. or queen Elizabeth's time: so that now the volume of our statutes is growne or swelled to a great bignes. I remember the opinion of a wise and learned statesman and lawyer^a, that multiplicity of written lawes doe butt distract the judges, and render the law lesse certaine; that where the lawe setts due and cleere bounds betwixt the praerogative royall and the rights of the people, and gives remedy in private causes, there needes no more lawes to be increased, for therby litigation will be increased likewise. It were a worke worthy of a parlement (and cannot be done otherwise) to cause a review of all our statutes, to repeale such as they shall judge inconvenient to remaine in force; to confirme those which they shall thinke fitt to stand; and those severall statutes which are confused, some repugnant to others, many touching the same matter, to be reduced into certainty, all of one subject into one statute; that perspicuity and cleernes may appear in our written lawes, which att this day few students or sages can find in them.

For the antiquity of written lawes in this island we have many testimonies. In the epistle to the third report^o I find this opinion,

^a Old Chr Oxenstierne.

^o Co. epist. 3 Rep.

“that the lawes of the antient Brittaines, their contracts and other instruments, and the records and judiciall proceedings of their judges, were wrote and sentenced in the Greeke tounge is plaine and evident, by proofes luculent and uncontrowlable.” He mentions the names of Brittannia from the Greeke words signifying a painted countrey, and Albion from the Greeke word Olbion, signifying a happy island; with many English words, as chyrographer, protho-notary, ideote, etc. yett tastig of a Greeke beginning: that Mul-mucius Dunuallo^p, 441 years before Christ, did write two bookes of the lawes of the Brittons, the one called statuta municipalia, the other leges judicariae, in the Brittish tounge, as they signify in that language; and is as much as to say the statute law and the common lawe. Queen Mercia wrote a booke of the lawes in the Brittish tounge, called merchenlege. Hoel Dha, that is, the good prince of Wales, in the year after Christ 914, in a frequent assembly of his states abrogated the antient ordinances, and established, made and provided new lawes for his subjects^q.

Butt to speake somewhat of the time of the Romans heere, Caesar himselfe testifyes, that the Druides for the dispatching and deciding of causes, as well publique as private, used the Greeke letters; and that the discipline of the Druides found in Brittain was from thence translated into Gaule^r. Which Pliny also witnesseth. Butt, when the Romans became conquerors of Brittain, some object, that their lawes, which were statutes and edicts of the emperours, their written lawes were heere established, and the positive lawes of this island chaunged. Which opinion I cannot submit unto, for these

^p Polychronicon, lib. i.

^q Leg. Hoel Dha Proem. Cambd. Brit. p. 650.

^r Caesar de bell. Gall. lib. vi. Graecis utuntur literis.—Disciplina Druidum in Britannia reperta, atque inde in Galliam translata.

reasons and arguments, which, in my humble judgement, seeme to evidence the contrary. Julius Caesar could hardly be stiled a conqueror of Brittain; and Dion relates, that he did not change the lawes of the Brittaines. Nor doth it appear, that Claudius altered them*. It is certaine, that from the coming of Caesar untill Domitian's time, which is about 150 years, the Romans now and then vexed the Brittaines with warre, butt never reduced them to a province till Domitian's time; and what lawes the Brittaines then had will be a question, for discussing of which it will be fitt to consider how farre the Romans did urge their lawes upon the provincials, which was not all alike in all provinces: for where the countries were civill and wealthy, they did more endeavour to reduce them to their lawe and government, than where they were barbarous, as they accounted this; they intended their profit what they could, butt for civill government, they desired noe further to have to doe in it, than for the keeping of the people under their yoke. The power of their provinciall praeses or chiefe governor was twofold: in imperio, which was the manning of the warre; and in potestate, which consisted of two parts, jurisdiction and curation. Jurisdiction was the administration of justice; curation was the provision and care they were to take in the buisnes of corne, of tributes, taxes and the like". If the lawes were altered, it was in that part of his power by which he tooke cognisance of causes, his jurisdiction, and in that they had butt three wayes: either they had new lawes appointed by the sentence legatorum", which were commissioners chosen out of purpose to treat of that buisnes; or there were speciall lawes made for the province att home; or else the proconsul did pro-

* Dion. lib. xiii.—Camb. Brit. f. 41.

† Rosinus de antiquit. Rom. lib. vii.

c. 42.

" In imperio; in potestate facultas cognoscendi jurisdictio, Curatio in re frumentaria, tributaria, vectigali, et vicaria.

° Ex legatorum sententia.

pound edicts in writing in the provinces^x. Butt that there were any of the former two courses used in Brittain is not likely, because no history, either ours or theirs, speaketh of it; and what was done in the last course may probably be, that the president might propose such lawes heere, as should keepe the people in obedience, and drawe their wealth from them: butt to establish any sett forme of lawe, it is probable they never did it, for if they had, it should have bin the civill written lawe of the Romans, which a little after that time began to flourish more than it had done before; and if that lawe had bin established heere, it had bin impossible it should have bin so quite extirped and rooted out of the realme againe that no steppes or prints of it should have remained, as there doth not in our politie. For our lawe is much more free, and favours of monarchy and aristocracy in its owne nature; and doth constitute a mixt, not absolute government^y, (as the author notes). Butt the civill law is for absolute and arbitrary power, as it is notably discoursed by Fortescue to his prince; and our lawe being so strange from the rule and practice of the civill lawe of the Romans, it is not probable that their written lawes should be heere established. The Romane government continued so slacke in this island, that in Antoninus time, in the year of Christ 156, or, as others say, 180, they had a king called Lucius^z who received the christian faith: and he probably att this time began the establishment of lawes, such as before were not indigenae and in use, butt new made statutes; for by the publique profession of christian religion, there came in civility, care of right and justice. And this appeareth by the ambassage that Lucius sent to Rome, not only for the faith of the gospel, butt also to have from him a copy of the Roman imperiall lawes to governe the

^x Plebiscita senatus consulta.—Edicta proponere in provinciis in scriptis.

^y Constituere imperium mixtum non merum.
 lius Verus imperabat cum Antonino.

^z Sleidan. f. 66. Lucius Aure-

people by : to which petition of the king and nobles of the kingdom of Brittain (questionlesse then mett together in a publique councill) pope Eleutherius, to whom it was sent, made this answere^a.

“ You have requested from us, that the lawes of Rome and Caesar might be sent over, which you desire to use in the realme of Brittain. The Roman and civill lawes we may alwayes reject, butt the lawe of God, in no wise. You have received of late, through God's mercy in the realme of Brittain, the lawe and faith of Christ; you have with you in the realme both testaments : out of them by God's grace, by the counsell of your realme, take a lawe, and by it, through the patience of God, governe your people of Brittain.”

By this may be gathered, that Lucius did not only intend the setting of religion in the kingdome, butt also of a state politique; and that he found defects of lawes, and therefore sent for the Roman lawes, then famous over all our part of the world^b; and that the Roman lawes had not bin planted heere when the island was made a province, which was butt in Domitian's time, who dyed about 40 years before Antoninus beganne his reigne in whose time Lucius lived. And if the Roman lawes had bin heere before, Lucius needed not to have sent to Rome for them : butt the holy father forbad the Roman lawes, and injoynd those of the testaments : and uppon this rescript it is very likely, (and a learned judge^c faith I am cleere of opinion) Lucius and his state did accordingly consulte and confider to supply, and take lawes out of Moses lawe; for it is very

^a Fox, p. 68. 96.—Stow, p. 36.—Spelman. Concil.—Parsons de trib. convers. p^t i. c. 4. f. 77.—Baron. Ann. eccl. a^o 183. Ad petitionem regis et procerum regni Britanniae, etc.

^b Sleid. de 4 imper. f. 66. Tempore Antonini Pii florent jure-consulti.

^c J. W. in suis annot. MS. (Probably the author's father. M.)

apparent (as may be more perticularly shewed elsewhere) that many of our positive and written lawes, are grounded uppon Moses lawe. And att this time (he supposeth) was the most generall and certaine ground layd both of our positive and written lawes, that continue yett, for the perfecting of the state now growen civill and monarchicall. And yett it is not to be doubted, butt that some antient and originall lawes were then suffered to continue such as they were in Caesar's time, the Druides continuing till king Lucius time, when they were converted by Eluanus the British bishop^d: and it seemeth impossible so to change the state of a commonwealth, that no part of the lawe customes or usages of it should remaine, if there remaine any of the cittizens of it. This epistle is cited by some^e, of Lucius to Eleutherius, and by Parsons affirmed to be fained[†]; butt I see no sufficient ground for that confutation. It is sayd also that the government of Brittain was altered in Constantine in his time, butt that was only for the names of officers from a president or proconsull, to praefectus praetor Gall. and vicarius Brit. heere under him.

The judgement of Sir Roger Owen^f concerning the imperial civill law is, that the learning of that written lawe, in respect of our common lawe, is private, fitter for universities than cittyes, fuller of contemplations than experience, more commendable in the students themselves than profitable to others; that before the Roman monarchy it was very uncertaine; yett both then and since, a learning and profession deserving honor and countenance, butt not admitted att any time to be a lawe of force in this island. And speaking of the great paines of doctor Cowell, in his booke of reducing the

^d Stow survey, f. 152.—Holingsh. lib. iv. hist. Angl. c. xix. p. 52.
versus Harding, f. 119.

[†] F. 18.

^e Jewel
^f Sir Roger Owen's MS. c. ii.

common lawe to the civill lawe, and to the civilians methode, he saith; the doctor hath taken great paines, in fine, to be delivered of nothing. Such is the labour of those, who would assume an affirmation, that the imperiall Roman lawe was att any time in use and force as the lawe of England.

The statute 25 H. 8. is expresse, that the cannon lawe hath no place in England, if it be contrary to the common law. The like is to be affirmed of the civill lawe, both with us and in forein states: it is acceptable under the request of primary and politique reason, not disagreeable from the customes of the state.

It appears by Roger Bacon the fryer, that king Stephen forbad the use of the lawes of Italy: and by the close rolles of 19 H. 3. commaund is given to the major and sherifs of London, to forbid schoole-masters and schollers to reade the civill or cannon lawes there.

By a manuscript chronicler, who lived in H. 2. time, it is related, that when two lawyers were sent into England from the king of France, who would prove some proceedings in parlement to be erroneous; to which purpose they alledged the bookes of the feuds, and the law of nations: the lords in parlement answered, "that this land is not governed by your written lawes, butt by lawes and customes used by our antient kings; in which if any shall be found defective, or inconvenient, only by common assent in parlement the kings of this realme are to redresse them."

In H. 3. time^s, all the earles and barons denyed the bishops request, that those borne afore matrimony should be legitimate,

^s 20 H. 3. c. ix.

bicaufe the church accepted them fo; the lords faying, " they would not change the lawes of England ^h." More plainly the whole parlement in 11 R. 2. fayd, " the civill lawe is not, nor was not, nor never fhall be used within this ifland."

In king James his fpeech to both houfes of parlement, he faith, the civill lawe is like the Latine tounge, an antient and learned tounge indeede wherby fchollers may parley: butt it is not the mother or radicall tounge of any people of the world; notwithstanding the doctors Ridley, Cowell, Cofens and other civilians challenge all the chriftian world, butt England, to be within their horizon. Certainly the imperiall Roman written law was of little use, and a ftranger in this nation; not received or allowed heere butt in fome perticular proceedings of the chancery, and fome other courts, after the formes of that lawe; which is alfo now and then vouched by learned perfons, in their arguments uppon cafes of our common lawes: not to fway the judgement, or as authorities, butt as ornaments to the difcourfe of pleaders; meeting fometimes with the reafon of our lawe, butt never over-ruling any point in lawe. The profefors of that lawe, and the profefion itfelfe (wherin my father had the honor to be a graduate) require deserved honor; and are of use on many occasions, perticularly uppon forein treaties and negotiations.

By the holy ftory it is evident, that God's people had no written lawe, before their comming out of Aegipt, till the lawe in the tables was given them from mount Sinai. Before that time the lawe was declared to them by the patriarkes and fathers of families, holy men of God, according to the dictates of the fpirit of God to them.

— Nolumus leges Angliae mutare,

And

And so it was with Moses, who gives this account of it to his father-in-law Jethroe: "when they have a matter they come unto me, and I judge between one and another, and I doe make them know the statutes of God, and his lawesⁱ. Of this proceeding there are many instances in the bookes of Moses. The Chaldee renders the text of Exodus xviii. "the people come to me seeking learning from God." The Septuagint is, "seeking judgement from God," that is (saith St. Augustin) from the eternall lawe of God, which was before all written lawe; which Moses, being full of the holy spirit, did more cleerly discern than all the rest of the Hebrewes, and in all things asked counsell, by his thoughts, meditation and prayer^k. Butt notwithstanding Moses were thus inabled and inspired, yett God was pleased to give certaine rules of written lawe unto his people by the hand of Moses, as he saith, "write thou these words;" and afterwards it is sayd, "he wrote uppon the tables the words of the covenant, the ten commandements." These lawes were explained by Moses and his successors unto the people, as it is sayd in the same chapter. "And Moses called unto them, and Aaron: and all the rulers of the congregation returned unto him, and Moses talked with them; and afterwards all the children of Israel came nigh; and he gave them in commandement all that the Lord had spoken with him in mount Sinai^l." Heere appears the orall law or unwritten lawe: and the statutes or written lawes.

The judges, who are the elders or sages of the lawe of England, are the expounders of our unwritten lawes, and of our statutes or written lawes; their expositions or judgements are delivered over to

ⁱ Exod. xviii. 16.
Exod. xviii. 16.

^k Quest. 67.—Cornelius à Lapide in hunc textum
^l Exod. xxxiv. 27, 28.—Ver. 31, 32.

their successors, and made in publique in the audience of the people; and there seemes to be some resemblance heerin to the exposition of the lawes of God, by Moses and his successors, which is thus described by the talmudes and rabbins. When Moses had learned the law from the great Almighty God, Aaron came in to the auditorie of Moses, where Moses expounded what was to be expounded to him: Aaron returned from his place, and sat on the left hand of Moses. Then came in the sons of Aaron, to whom Moses expounded what was to be expounded to them: they went from their places, and sat, Eleazer att the right hand of Moses, and Ithamar att the left hand of Aaron. Then came in the elders or presbiters, and Moses likewise expounded what was to be expounded to them: they going away, the whole body of the people came in, to whome againe Moses expounded what was to be expounded to them. Moses departed, and Aaron expounded; Aaron departing, his sons expounded; and they going away, the elders expounded to the people^m. This they tearmed the chaine like tradition or delivering over of the orall lawe, wherof Maimonides saith thus: "All the praecepts which were given to Moses in Sinai, are given with their explanations according to that which is said, I will give the tables of stone, and a lawe and commaundement which I have written, that thou maist teach them." This lawe (saith the rabbi) is a written lawe, and the command denotes the explication of it: whence we are required to performe the lawe according to the sentence of the commaundement; and this commaundement is that which we call the orall laweⁿ. Butt the text is, "commaundements which I have written;" and with our translation agrees the greeke and severall other versions. And it is plaine, that they had both an orall,

^m Gemar. Babilon. ad tit. Erubin. c. v. f. 54. 2. Unde etiam Sal. Jarch. ad Exod. xxxiv. 32.—Glossa Talmudica.—Rabbi Jehuda. ⁿ שלשה הקבלה Praef. ad tit. Talmudic. Zeraim. et ad Jad. Chazaka.—Exod. xxiv. 12.

and a written lawe: the version of the Spanish Jewes is expresse to that effect; and heerwith hyperbolically agrees R. Simeon Ben Lakish, and divers other of the Jewish authors, that this orall lawe was taught by Moses to Aaron, and to his sons, and to Joshua, and to the 70 elders of the sanhedrim; that Joshua, who was Moses disciple, delivered it over to his successors, princes of the sanhedrim, and the elders delivered it to their successors; and so from one to another, till after the distruction of the temple°. For their written or statute lawes, the same appeare in the bookes of Moses, wherof that of Deuteronomy chiefly hath its name; and Moses is sayd to have written thirteene bookes of the lawe with his owne hand, one wherof he gave to each of the twelve tribes, and the thirteenth booke was layd up in the arke, according to that text; “take this booke of the lawe, and putt it in the side of the arke of the covenant, of the Lord your God, that it may be there a wittnes against thee^p.”

As with the Hebrewes, and with us in England, so in most nations they had both an orall or unwritten lawe, and statutes or written lawes likewise, and after the manner of that which is described in the government of the Gothes and Swedes; therefore I shall not need to be more perticular than in the recitall therof.

° Ταὶς ἐντολαῖς ὥς ἔγραψα.—Gemar. Babilon. ad tit. Beracoth. c. i. f. 5. 1.—Y la ley y la encommenda que escrivi para a mostrarlos.—Tract. Talmud. Pirke Aboth. Rabbi Nathan Babilon. Maimonides Moses Mikotzi. Abraham Zacuthius in Sepher Juchasim. R. Gedaliah in Shalseleth Hacabala. Josua Levita in Hilcoth Olam. David Ganz in Tzemath David, etc.

^p Δεύτερος νόμος.—In praefat. ad Seder Zeraim, et ad Jad Chazaka.—Deut. xxxi. 26.

Of this people it is said, that in the first ages they used no other lawes butt those which nature and honesty had ingraven^a; and indeed the lawe of nature, written in the hearts of all people, was the first and originall lawe by the which men were governed: he saith, that the will of their kings was taken for law, who governed all things as it were by their hand; and he cites that passage of Tacitus att that time, with these “did good manners more avayle, than elsewhere good lawes^b.” With this agrees the observation of their learned author, whom I well knew, Loccennius; that in the beginning of the commonwealth of Swedes and Gothes, as amongst other nations “so heere the publique government was exercised by no other lawes, or manners, butt what were divinely written in the hearts of men^c.” He also agrees in this, that afterwards the will of the king was instead of law; and whatever he did commaund in reason, that was law and ratified, according to that Swedish pro- verbe, the king’s word is valuable. “Those of their lawes (saith Wexionius) which carryed the best reason were not so much committed to writing; as to memory; like as amongst the Lacedemonians. Our first auncestors (saith he) had neither their fundamen- tall, nor other lawes comprised in writing^d.”

Afterwards (saith our author) the mindes of men being naturally depraved by vice; and kings, as men, subject to erre; it was re- quisite to have written lawes, certaine and constant, by whose rule

^a Wexionius, lib. v. c. 6. Nullis utebatur legibus, nisi quas natura et honestas sculp-
ferat.

^b Plusque tùm apud hosce valuerunt boni mores, quam alibi bonae leges.

^c Loccennius, p. 54. Ita hic nullis, nisi cordibus hominum divinitus inscriptis, legibus,
et moribus pub. imperium agitabatur.

^d Dein arbitrium regis pro lege erat.—
Cum ratione jusserat, id jus ratumque fuisse.—Dyrt er Drottens ord.—C. viii. Non tam
literis quam memoriae, veluti et apud Lacedemonios, commendabantur.—C. vii. Ut
nullas alias, ita nec fundamentales scriptis comprehensas leges habuerint.

the government should be administred : that where the law is bad, or (which is all one) uncertaine, there also other things are uncertaine and doubtfull whose rule the lawe ought to be ; as Tully faith, all things are uncertaine when the law is departed from, nor can it availe what that will be for the future " which is placed in the will, if I may not say in the lust of another " ;" therefore certaine rules and written lawes are commended. Before the use of paper and parchment was found out yett had the Gothes written lawes, that is, cutt and inscribed in tables of wood ; as the lawe of mount Sinai was written in tables of stone. The lawes of Westro-Gothland are recorded to be first proposed by one Lumberus, and were therefore called Lumbi leges : he was a pagan. The severall lawes of other provinces being diverse constitutions, speciall lawes, and municipall rights dispersed into severall volumes, like our merchenlage, West Saxon-lage, and Dane-lage. Christopher king of the Swedes, Gothes, Danes and Norwegians, etc. like our king Edward the confessor, out of that variety permitted to be compiled the common lawe, in one law-booke which we use att this day^w. This I have seene : and all their common lawes, and the decrees and acts of their publique councells (which are very few) are att this day written, and made use of by reading the judgement out of the lawe booke, which is for the most part now printed and used in the respective judicatories.

The imperiall Roman lawes never reached this countrey ; nor were they ever subject to the eagle, butt clipt her winges, as the brittish Brennus and Belinus did, when they subjugated Rome herselfe.

^w Lib. ix. fam. epist. 16. Quod positum est in alterius voluntate, ne dicam libidine.

^w Lib. v. c. 8. Ex ista varietate jus commune in unum legisterium, quo hodieque utimur, compilari permisit.

Butt this Roman law was not liked in those countreys where the Romans had dominion. Guy de Coquel, advocate generall to the duke of Navarre, thankes God, that in France they are not governed by the civill lawe: we are happy (saith he) that our lawes are shorte and substantiall, not subject to such anxiety and uncertainty as is in the Roman law. England hath more cause for this gratitude, their lawes being much shorter, and more substantiall than those of France. Wheras of the civill law it is said, that if all the bookes therof should be heaped together, they would be higher than the tower of Babel^x. And therefore Erasmus saith, "except a man be madde, he will never with the policy of the Romans, or the imperiall government to be in his countrey." In Spayne the civill lawe hath no place, butt only as it is naturall reason^y. Among the Switzers to cite the Roman law was capitall^z. In Fraunce the constitutions of the emperors are forbidden to be alleadged contrary to the customes of the place; and it was enacted, that the French shall not be subject to the Roman lawes: and Servinius observes the miseries that would befall France, if they were governed by the civill lawes.

The popes themselves forbad the Roman lawes to be taught; as is remembred by Baldus and other civilians^a.

Butt I shall not need to labour any further in this matter: my humble observation is, and I do not find, that in any nation of Europe, the Roman imperiall written law is received or used, as the law of the nation; though the same be tearmed the law of nations.

^x Gentianus Farvettus.

^y Didacus Perez. Ordin. Castell.

^z Chop-

pinus.—Code Henry. Charondas. Edict. Phil. regis, ann^o 1287.—Phil. 4. an^o 1304.

^a Honorius 3. Eleutherius.

Butt it is in esteeme (as it deserves) and vouched where the municipall law failes, as a direction for their judgements; and in this way both with us, and more in other countrys the profession and professors of it, and the law itselſe hath ſome force and countenance.

Butt I muſt leave the Roman ſtatutes or written lawes, to proceed to my next ſtep, touching the ſtatutes or written lawes made and provided by our Saxon auncetors, many of which are yett extant in their owne idiome. King Alfred or Alured of the Weſt Saxons (as Coke affirmes) wrote a booke about 872 years after Chriſt, and called it “a certaine breviary which he compoſed out of divers laws of the Trojans, Graecians, Brittaines, Saxons and Danes^b.” In the year 635 Sigebert, king of the Eaſt-Angles, wrote a booke of the lawes of England, called “the institutions of the lawes^c.” King Edward, before the conqueſt the third, “out of the vaſt heape of lawes which the Brittaines, Romans, Engliſh and Danes had made, choſe out the beſt, and compiled them together in one which he would have to be called the common lawe^d,” as appears by the ſeverall hiſtorians who write of thoſe times.

Of W. I. whom they call the conqueror, it is written, that after he had ſubdued this iſland, to prevent offences “he decreed to bring the people ſubjected to him under a written lawe;” and out of the Marchen leg, Dane leg and Weſt Saxon leg, ſome he rejected, approved others, and added of the lawes of the Normans “ſuch as were

^b Co. ep. 3. Rep. Breviarium quoddam quod composuit ex diverſis legibus Trojanorum, Graecorum, Britannorum, Saxonum et Dacorum.

^c Legum instituta.

^d Ex immenſa legum congerie quas Britanni, Romani, Angli, et Daci condiderunt, optima quaeque ſelegit, ac in unam coegit quam vocari voluit communem legem.

most effectually for preserving the quiet of his kingdom^e:" Hoveden relates it, "by the counsell of his barons^f." The booke of Litchfield saith, that W. 1. "caused to be summoned, through all the consulates of England, the nobles, and wise men, and learned in the law of England, that he might heare from them their owne lawes and customes^g:" and twelve were returned out of every countey, who showed what the customes of the kingdom were, which for the most part were confirmed in that assembly, with the assent of the barons; as the Roman lawes were by the 12 men, compiled out of the Graecian lawes and customes of the country^h. H. 1. restored to the English "the lawe of St. Edward, with such amendements as my father amended them by the counsell of his baronsⁱ." King H. 2. wrote a booke of the common lawes and statutes of England, entituling the one part "the lawes for the commonwealth," the other "the royall statutes;" wherof nothing now remaines^k. From these relations and passages of story, butt chiefly from their owne fancies, some have found out reproaches and calumnies to cast upon their owne birthright, the native lawes of their owne countrey; blemishing them as patched, and made up out of the decrees and statutes of conquerors of severall other nations. It little becomes Englishmen to affirme this, although there should be probability for such a scandall; butt it lesse becomes them, or any rationally indifferent person, to vent these libells, when there is not the least shadow or colour of trueth in them.

^e Gervasius Tilberienfis. Decrevit subiectum sibi populum juri scripto.—Quae ad regni pacem tuendam efficacissima videbantur adjecit.

^f P. 343. Ed. lond.

Concilio baronum suorum.

^g MS. et not. ad Eadmerum. p. 171. Fecit summoneri, per universos consulatus Angliae, Anglos nobiles, et sapientes, et sua lege eruditos,

ut eorum et jura et consuetudines ab ipsis audiret.

^h Instit. tit. 2. §. Sine scripto.

ⁱ Mat. Paris, p. 75. Ed. lond. Lagam regis Edwardi vobis reddo cum illis emendationibus etc.

^k Co. ep. 3 Rep. Pro republica leges. — Statuta regalia.

If the judgement of the learned chancellor Fortescue¹ may have as much credit as the assertions of these men, we shall be satisfied, that in the times of the severall nations, Brittaines, Romans, Saxons, Danes, Normans, and their kings who had dominion heere, this realme was still ruled with the selfe same customes that it is now governed withall: which if they had not bin right good, "some of those kings moved either with justice, reason, or affection, would have changed them, or else altogether abolished them", and especially the Romans who did judge all the rest of the world by their owne lawes; likewise would other of the foresaid kings have done which, by the sword only possessing the realme of England, might by the like power and authority have extinguished the lawes therof.

That the Romans did not change our lawes, and impose their owne imperiall statutes on the Brittaines, hath bin before noted. And although the Romans had their colonies heere, as Malden in Essex, called by them Camalodunum, Yorke, as an inscription in an old piece of money of Severus testifies, and att Chester called by them Deua and Deuana from the river Dee, and witnessed by the inscription of an old coine of Septimius Geta, and att Bathe, as appears by an inscription in a fragment of a stone in the walles of it, touching Gloucester which was called Gleve, and was a Roman colony², and some thinke the like of Colchester; and every colony was butt an image of the mother citty, with like holy rites, like courts, lawes, temples, places

¹ De laudib. leg. Angl. lib. i. c. 17.

² Aliqui regum illorum, justitia, ratione, vel affectione concitati, eas mutassent, aut omnino delevisent.

³ Camalodunum—Col. Eboracum. Leg. VI. Victrix.—Col. Diuana, Leg. XX. Victrix.—DEC. COLONIE GLEV. VIXIT ANN. LXXXVI.

of publique commerce, and for the most part with duumviri in lieu of consulls, and aediles and decuriones in lieu of a senate; and Tacitus notes, that the Brittaines affected the roman language, rhetoricke, “roman habit, roman pleasures, diet, and the like which some (saith he) called civility, when it was a part of servitude°;” and the poor Brittaines being subdued must submit to the lawes of the victors: yett we find in no story the footstepps of a change of the law, and government heere. And if some alterations probably were made, for the better keeping under of the Brittaines in their subjection; yett even of those, hardly any tokens are now remaining.

The next who made incursions into this kingdome were the Piets, who (as is probably conjectured) were the northerne Brittaines: and though they did infest the southerne partes, and middest of the kingdome; yett they never settled themselves so as to make any alteration of lawes and politie, butt were driven out againe, and waisted by the Scots.

The Scoti did much infest the northerne parts of the island, and those parts only, never entring much southerly; butt they never obtained any kingdome or settled dominion heere, so as to change any of our lawes or politie^p.

The Saxons invading this island could not bring our lawes with them, for they were not the lawes of those countreyes from

° In vita Agricola. Habitus nostri honor, et frequens toga, balnea, et conviviorum elegantia; idque apud imperitos humanitas vocabatur, cum pars servitutis esset.

^p Scoti tantum infestarunt in partibus septentrionalibus, nunquam obtinuerunt regnum aliquod.

whence the Saxons came; neither were they devised heere by them, being pagans, and our lawes favouring altogether of Christian religion; and if they had devised them, there would be some history, or record or testimony of it. Butt (as the traditions of the church observe) the Saxons finding heere lands, woods, waters, and lawes, continued the use of them all for themselves, and their own good; and did not apply themselves (nor were very fitt or apt for it) to the devising and framing of a new state and politie: nor could such civill lawes as ours come out of such uncivill and barbarous heads as those were; they being pagans and barbarous, and our lawes most christian-like and civill. And though they drave out many of the Brittaines (butt not all) and were lords of the land, and had a heptarchy heere; yett I doe not see how they could utterly extirpate the fundamentall lawes of the nation: yett I doe believe that they did urge some new ones of their owne, such as tended to the establishment of themselves and their conquest. And that which they called in their collection the merchenlage and westfaxonlage, with their statutes, were many of them the lawes of Brittain in king Lucius his time¹.

The Danes did infest this kingdome 200 years, butt had the intire dominion heere only 20 years, by Swain, Canutus, Harold, and Hardi Cnute; during which time there was no alteration of our lawes, butt in some few perticulars, chiefly tending to the settlement of their owne peace and conquest. The law danelege was so called from them, the authors of it: and Matthew Westminster relates, that under king Cnute “ in a publique councell att Oxford, both by consent of the English and Danes, all agreed to observe the lawes of king Eadward the first.

¹ Lib. de antiquis Britanniae legibus.

Wheruppon those lawes, by commaund of king Cnute, being translated out of the english tounge into latine, and for the equity of them, by the aforesaid king were commaunded to be observed as well in Denmarke, as in England^r." These were not new lawes, butt the lawes of E. 1. and yett agreed uppon, and commaunded to be observed in Denmarke as well as England. And these lawes of E. 1. were by him collected out of former lawes of this island.

What was done by W. 1. and his Normans, touching the alteration of our lawes, hath bin before in parte noted: and wheras Gervase of Tilsbery, and some others, report that the Normans did reject the greatest part of our lawes, and brought in the customes of Normandy; it had been much more consonant to the trueth of history, if they had affirmed, that the customes of England were carryed over into Normandy, and there established; as hath bin before noted, and is evident by their owne acknowledgement. Which of our lawes they did abrogate no man did ever yett discover, neither can it be proved by any likelyhood: for our lawes doe differ as much from the old lawes of Normandy, as of any countrey in the world; and it is strange that the Normans should bring such lawes hither, and leave none of them behind in their owne countrey. Where Gervase of Tilsbery saith, that W. 1. added of the lawes of Normandy to our lawes, he saith they were such as were for the peace and safety of his kingdome; and such lawes as he in writing allowed are, by a denomination from the greater parte, called the "good and approved lawes of the kingdome^r." Matthew Paris

^r P. 404. an^o 1022. Angli et Dani, in colloquio apud Oxoniam celebrato, de legibus regis Eadwardi primi tenendis concordēs effecti sunt. Unde eisdem legibus, jubente rege Cnutone, ab Anglica lingua in Latinam translatis, tam in Dania quam in Anglia propter earum aequitatem à rege praefato observari jubentur.

^s Not. in Fortescue, p. 8. Bonae et adprobatae antiquae regni leges.

calles them, after the addition of W. 1. lawes, yett still “ the lawes of king Edward, which formerly were invented and constituted in the time of Edgar his grandfather ‘.” Roger of Hoveden calles them “ the lawes of the most righteous king Edward “.” And Ingulphus abbot of Crowland, who lived under the conquerour, brought a copy of them from London to his abbey, as he remembers in his printed storie, and calles them as Hoveden doth “ the lawes of the most righteous king Edward : the which (saith he) my most excellent lord king William did proclaime to be authentique and perpetuall, and uppon the most grievous paines to be inviolably kept through all the kingdome of England; and commended them to his justices, in the same language wherin they were made “.” And in a manuscript copy in Sir Thomas Cotton’s librarie, continued by Peter of Blois after that which is in print, succeed those lawes of W. 1. there spoken of, with this title in broken french, thus englished. “ These are lawes and the customes which the king William graunted to all the people of England, after the conquest of the land; these are the same which the king Edward his cousin held before him. That is to say, peace to the holy church, etc *.” They were thus called St. Edward’s lawes, and to this day are: butt I cannot deny butt that some Norman customes might be mixt with them, and to this day continue. As succeeding ages, so new nations (comming in by a conquest thought mixt with a title, as of the Nor-

* MS. vit. Fred. abbati Sti Alb. Leges Edwardi regis quo prius inventae sunt et constituti in tempore Adgari, avi sui.

“ Leges aequissimi regis Edwardi.

“ Ingulphus, p. 914. Leges aequissimi regis Edwardi, quas dominus meus inclitus rex Wilhelmus authenticas esse et perpetuas, per totum regnum Angliae inviolabiliter tenendas, sub poenis gravissimis proclamarat, et suis justiciariis commendarat, eodem idiomate quo editae sunt.

* Ces sont leis et les eustumes qui li reys William grantast à tut le puple de Engleterre, apres la conquest de la terre ice, les meismes que le reys Edward sun cosin tint devant lui. Ceo est a sauoir, pais à saint eggglise, etc.

man conqueror) bring commonly some alteration: by this well considered, that of the lawes of this realme being never changed will be better understood. The whole body of the civill politie and lawes was not changed; many of the lawes were continued through all the changes of the state and governors. Yett rationally and probably it may be concluded, that the originall of our laws and statutes was made and provided by Lucius the first brittish king, and founded uppon the holy scriptures, divers of them continuing to this day yett in our lawes and statutes. In so many ages and changes of state, it were hard to deny butt that there have bin also some mixtures and alterations: as the Saxons made a mixture of the Brittish customes with some of their owne; the Danes, with old Brittish, the Saxon, and their owne; and the Normans, the like.

And for the antiquity of our lawes, to lett passe the story of Brute, more is to be had from the antienter and true origination of the Brittons, which is from Japhet and his posterity; and that the Brit-tish isles, with all the west, were given by Noah's last testament to Japhet: and if he and his posterity possesse these parts of Europe (as they did) their government was not without laws^y. And as the notes uppon Fortescue say^z, in trueth, and to speake without perverse affectation, all lawes in generall are originally equally antient, all were grounded uppon nature; and no nation was, that out of it tooke not their grounds: and nature being the same in all, the beginning of all lawes must be the same. Divers nations, as divers men, have their divers collections and inferences; and so make their diverse laws to grow to what they are, out of one and the same roote. Many of our present laws were not thought on 500 years since, and then were many that 500 years before had no being, and lesse time forward alwayes produced divers new; the beginning of all heere

^y Cambden's Britannia.—Greeke Scaligeran chron. of Eusebius.

^z P. 17.
being

being in the first peopling of the land when men, by nature being civill creatures, grew to plant a common society. This rationally considered might end that obvious question of those, who would say something against the laws of England if they could. 'Tis their triviall demaund, When and how began your common lawes? Questionlesse its fittest answered by affirming, when and in like kind as the lawes of all other states: that is, when there was first a state in that land which the common law now governes, then were naturall lawes limited, for the convenience of civill society heere; and those limitations have bin from thence increased, altered, and interpreted, and brought to what now they are. And surely more of the most antient lawes and statutes, made and provided by our auncestors in this island, doe still continue in force with us, than can be paralleled in most other nations of Europe; wherof somewhat is noted in other places.

The praeceptive or statute laws of England, which are the written laws, are of two sorts, declaratorie of the old law, or introductorie of new^a: those which are declaratorie of the old lawe are such as confirme parts of the unwritten, customary, positive laws of the land, which were in use before, and opposed by conquerors and their successors bicause they were for the liberty of the subject; and being in some sort exiled for a while after conquest, yett sticking still in mens minds especially of the nobilitie, were by force obtained to be declared law by the statute of magna charta; which were the laws collected by Edward the confessor, and by this charter became written lawes, bicause they were of new published by the common councill of the kingdome^b.

^a Declaratoria antiqui juris, introductoria novi.
commune concilium regni.

^b De novo promulgatae per

Our customes could not be introduced by conquerors, for then they would have bin promulgated in writing ; butt there is no writing, record, or history of the beginning of them : butt such lawes as were altered or inforced by conquerors were reduced into record, and writing, wherof we have severall statutes which are introductive of new lawes. Butt I have launched too farre in this wide ocean : it is time to make to shore, lest I be foundered ; and to beg pardon for my confused and tedious notes on this subject, all which are submitted to better judgements.

C H A P.

C H A P. XLVIII

Two knights.

THE word knight is with us most commonly restrained to an honorary title, and is the next in ranke to a baron; butt (as most other words that make the titles of honor) hath bin of divers significations: sometimes it denoted the sexe, or as much as male, as a *tin pinter cnýht* a man child of ten years of age; so *dienst knecht* is a man servant to this day with the Dutch. And properly both in high and low Dutch land, the word *cnýht* and *cnýht* signified a servant or attendant. Thence Christ's disciples are termed, in the Saxon evangelists, Christ's learning knights*. So *stal knight* is with them a groome or servant to the stable, and *knechtwiise* is service. So in the preface to the 7 penitential psalmes in H. 8. primer, *Uriah* is called king David's knight or servant. So an apprentice is in the Netherlands called a *lear-knecht*, that is, a learning servant. It is likewise taken for a client or vassall, as *incnyght*^b. Whence tenants by knights service were also called knights, as in the rolles of escuage, and pipe rolles, where escuages and aids are accounted for, and in our writs of attaint. Bracton mentions *rod knights*, for tenants that held by the service of riding from one manor to another with their lord^c; which was adjudged in H. 3. time, to be such a knight's service, that it drew ward and maryage to it. Generally all tenants who held of the king or of any meane lord, by knight's service, were

^a *Cnyht leornung cnýhtar*.^b *Cambd. Brit. f. 170.*^c *Brooke**Droit de recto. 18. De acquirend. rer. demin. lib. ii. c. 35. §. 6. et c. 16. §. 6.*

called knights ; and by the king's writ might be summoned to take that order of knighthood upon them, and were to be amerced in case they did not appear at the day appointed for that purpose^d: sometimes also the king pardoned those amerciements before the justices of the party for not being a knight, and willed that he be not distrained to take military arms, that is, to be a knight. And the like appears by the writs to distrain all who have twenty pounds a year in land, or a whole knight's fee worth twenty pounds a year, and hold in capite, and ought to be knights and are not; the sheriff is commanded to distrain such, to take upon them military arms without delay. The discharges of amerciements for not being knights do shew the like. This king in a writ reciting the custom of the kingdom, that all who have 20l. land by the year, or a knight's fee of 20l. a year, should take military arms; yett he, in grace, extends it only to such as have 100l. land a year. And sometimes it is extended to those who have 40l. land a year. And sometimes to such as had butt 15l. land a year; sometimes to such as had 30l. land a year: butt I conceive that of 15l. a year to be mistaken, and none to be under 20l. a year. Sometimes the writ hath bin for 50l. a year: both the writs and somes have often varied. It appears also by record, that the barons of the realme were not excused, if they were not knights, butt were bound to appeare upon these writs: as the lord Grey of Cotmore was driven to plead upon such a writ. So was the lord Brooke, and the lord Ogle. And there the king sent subpoenas to divers lords to take the order of knights of the Bath with the prince. So the lord Brooke was summoned, and Cobham: and the lord Barkley of Dursly pleaded by protestation, that he was a peere of the realme; and for plea said, that he had not his lands by the space of three years. William lord Botreaux

^d 3 E. 1. Rot. claus. m. 5.

pleaded

pleaded in like manner. And the lord De la Ware pleaded not his barony, butt that he was a priest, and had taken holy orders; and that plea was allowed; else perhappes by that precedent, the clergy might have come in. Judge Moyle came in by summons, and tooke the order uppon him; so did Cheeke and others: but Rolfe, a serjeant att law, pleaded that he was a serjeant, and by his oath was bound to attend the suits of the king's people^e. Many other cases and pleas uppon this matter are in the records^f: and the king might send forth these summons not only att his coronation, but att any other times when he pleased. King E. 2. made a law in favour of those, who were summoned to be knights^g. And uppon the case of Stephens, in the exchequer, judgement was given for the king. Butt the same being afterwards considered in parlement, and an act presented to the king who was pleased, in much favour to his people, to give his royall assent therunto; wherby all such writs and proceedings, to compell any man to take the order of knight-hood, are abrogated, and noe meane flower of the crowne devested^h. It were too tedious to show the nature of that tenure by knight's service, the quantity of a knight's fee, the reliefs and services due uppon it; it may suffice to shew, that tenants by knight's service were to be knights, and called by that name; and possibly either by

^e 6 E. 1. Rot. claus. m. 3. Rex non voluit quod W. H. distringatur ad arma militaria suscipienda.—6 E. 1. Rot. claus. m. 8. dorso.—Ad arma militaria à nobis suscipienda.—7 E. 1. Rot. pat. m. 5.—8 E. 1. Rot. claus. m. 1.—13 E. 1. Rot. claus. m. 9.—20 E. 1. Plees in parlem^t f. 33. a.—21 E. 1. Rot. fin. m. 25.—Seld. Tit. hon. f. 319, 320.—44 H. 3. Rot. claus. m. 14.—6 E. 2. Rot. claus. m. 16. dorso.—Littleton's argument in the case of knighthood. in scaccar. temp. C. 1.—T. 5. E. 4. Rot. 16.—T. 5. H. 8.—10 H. 7. Rot. 13.—T. 1. R. 3. Rot. 61.—5 E. 4.—15 E. 3.—P. 12. H. 4. Rot. 19.—M. 13 H. 4. Rot. 23.—T. 5. E. 4. Rot. 21.—M. 9. H. 6. Rot. 14.
^f Case of knighthood, antea.
^g Stat. 1 E. 2. De militibus.
^h 3 C. 1. in scaccar.—17 C. 1. c. xx.

election or by tenure, some of them antiently might come as members to our publique councells.

Another notion of the word knight is for the chiefe gentlemen or freeholders of every countey, who were called knightsⁱ. And those elsewhere named feudatarii, were here called knights; as the king's knights, the knights of the archbishop, the knights of earle Roger, of earle Hugh, etc.^k that is, their tenants, who received their lands with condition to serve for them in the warres; the which tenure they called knight's service, and those tenants or freeholders were tearmed knights.

In this sence the word is used in the statute of Westm. 1.^l that through all shires sufficient men shall be chosen to be coroners, of the most wise and discreete knights: this is explained afterwards by another statute^m, that the coroners shall be chosen in the full counties, by the commons of the same counties. And judge Fitzherbert saith the word knights was putt into the statute, to the intent the coroners should have sufficient freehold in the countiesⁿ. Our German antiquary sayes, we find that the name of knight is not now of us only used to stand for eques auratus, which is ordinarily a knight, butt is also borne in regard of bearing authority or office^o; as we see in our knights of the shires, who are yett not properly knights, as the name of knights is properly understood. Butt the statute of H. 6. cleareth this^p, where it enacts (as hath bin before noted) that the knights of shires for the parlement shall be notable knights, of the same counties for the which they shall be

ⁱ 2 Tit. hon. Seld. p. 770.
 archiepiscopi, milites comitis Rogeri.
 E. 3. c. vi.
 H. 6. c. xv.

ⁿ Fitz. N. B. f.

^k Cambd. Brit. p. 171. Milites regis, milites

^l Stat. Westm. 1. c. x. m 28

^o Verstegan, p. 319. p 23

chosen;

chosen; or otherwise such notable esquires gentlemen borne, of the same counties, as shall be able to be knights; and no man to be such knight, which standeth in the degree of a yeoman, or under.

Having considered who these knights to be chosen ought to be, in the next place the number of them is to be considered: and this writ directs two for the countey; and so it hath bin for many years in the writs of summons; butt formerly the number of them hath bin uncertaine.

In the time of king Canutus, to a charter then graunted to the monastery of St. Edmond's Bury (probably in a publique councell) after the subscriptions of the queen and dukes, followes, "I Oslaus, knight, I Thored, knight, I Thurkell, knight," and so of others¹. How many these were, or how for severall counties, doth not appeare; nor in that parlement of the same king (for so it testified by the description of it) where it is sayd, that "the king calling all the praelats of his kingdome, and the nobles, and great men to his parlement," there were present, bishops, abbots, dukes, earles, "with many militibus," butt the certaine number is not extant; nor of those which are mentioned in the parlement of Edward the confessor, where, after the king, queen, archbishops, bishops, abbots, king's chapleins, thaines, knights are reckoned in that parlement. In magna charta, for the king's graunt of their liberties, the bishops, nobles, knights, etc. give him a fifteenth of all their moveables².

¹ 4 E. 3. Inspeximus. Rot. cart. m. 58.—Ego Oslaus miles, ego Thored miles, ego Thurkell miles, etc.

² Co. ep. ix. R. Spelman. concil. p. 534. Cunctos regni sui praelatos procuresque, et magnates, ad suum convocans parliamentum—Cum quam plurimis militibus, etc.—Spelman. concil. p. 627.—25 Ed. conf. Conventus celeberrimus—Comitibus, ministris seu thanis regiis, et militibus.—9 H. 3. c. xxxviii.

Mr. Prinne hath noted the varieties of the king's writs^a, summoning sometimes 4, sometimes 2, sometimes butt one knight out of a countey. Accordingly we find in that writ before noted, in king John's time, the sherife was to summon four knights of his countey, to conferre with the king att Oxford; and the like was to all other counties^b.

In the 32 H. 3. knights are mentioned to be in the parlement; and four knights for every countey in the 42 year of his reigne.

In the 51 year of his reigne, butt one knight for every countey was summoned to be chosen for the parlement^c.

In the 16 year of E. 2. we find butt one knight returned for a countey.

In the 20 year of his reigne, the parlement sent a message to him by 3 bishops, 2 earles, 2 abbots, 4 barons, two justices, and three knights for every countey^d.

In 12 E. 3. there seems by the rolle to have bin more than two or three knights for a countey, returned to the parlement: and in the 17 year of the same king, there was butt one knight for a countey returned to the parlement. In the 26 year of his reigne, butt one knight for a countey returned, and the like in his 27 yeare. And in the statute staple it is sayd, uppon good deliberation had with the praelats, dukes, earles, barons and great men of the countrey, that is to say, of every countey one for all the countey, it was ordeined, as there followeth^e.

^a Plea for the lords, p. 392.

^b 15 Jo. regis. Rot. claus. p^t ii. m. 7. dorso.

^c Math. Paris, p. 743. 48.—42 H. 3. Rot. claus. m. 1. dorso.—51 H. 3. Rot. pat. m. 15. dorso.

^d 16 E. 2. Rot. claus. m. 19.—Grafton, p. 225, 226.

Walsingham. hist. Angl.

^e 12 E. 3. Rot. claus. p^t i. m. 6. dorso.—17 E. 3.

Rot. parl. n. 7.—26 E. 3. Rot. parl. 27 E. 3. Rot. claus.

By the statute of H. 8. for justice to be executed in Wales^r, among other things it is enacted, that for all parlements for this realm, one knight shall be chosen for every shire within the dominion of Wales; the election to be in like manner as in England, and the knights to have the like priviledges, etc. as the knights of shires in England chosen to the parlement.

In England the constant course hath bin since E. 3. time, to commaund, by writ, every sherife to cause to be elected within his countey, and to be returned to serve in parlement for each perticular countey, two knights, and no more nor no fewer. And some have made objections uppon the same number to all counties alike, as not proportionable; that the countey of Rutland (for instance) should send as many deputies to parlement as the countey of Yorke. Butt this certainty of number hath bin a long time setled; and it were daungerous, by any innovation, to make an alteration in any long setled frame and constitution of our governement.

27 H. 8. c. xxvi.

C H A P.

C H A P. XLIX

Girt with swordes.

THIS shoves the order of knighthood to be especially militarie, though in all times also extended to the gowne. The latine word, in this writ used for knights, is milites, the which properly signifies soldiers or warriors: some derive miles from the Greeke word, signifying war; or, from the Hebrew word of the same acceptation^a. Others will fetch it from that passage of Romulus, who chose out of the people 1000 men, and armed them for publique defence; and the first legion consisted of 3000 men, and because of the number mille, a thousand, they were called milites^b. In the same acceptation we meet with the word knight, in that of St. Paul, which in the Saxon interpretation is, “the knight beareth not his sword in vaine.” And in that sense it is, to this day, in the Dutch^c.

That it is especially a military order, appears also in the Latine name of equites, given to knights, signifying horsemen; which appellation is followed in the later languages. The Italians say, cavalieri, the French chevalliers, the Spanyards caualleros; and the more antient tongues, the Brittainish, call a knight margogh, and the German reiter, the same as with us rider, all from horsemen: and they were called knight riders, for their attendance upon the king in his warres^d; from them the street in London is supposed to be called

^a Μαλ. — מלחמה
ne ge cnyht buzan intingan hys rryrth,

^b Varro, lib. iv.

^c Rom. xiii. 4. Ne birtē

^d Verstegan, p. 319.

Knight-riders streete, being the place of their residence; and so knight gild was a confrery established by king Edgar, without Aldgate London, for 13 knights or soldiers, of good desert to him and the realme. And every one who held of the king, or of any mesne lord, by a whole knight's fee, was by his tenure to serve his lord in the warres, as an horseman.

By our antient lawe it seemes, the equitatura, or horse and armor of a knight, was priviledged from executions^e. The custome of giving armes and girding with a sword, as ensignes of honor and dignity, is very antient both with us and in other nations, as to the creation of knights. The ceremonies therin are noted to have bin of two kinds especially, courtly and sacred: the courtly were the feasts, giving of robes, armes, spurres; whence the phrase to adorne with military armes, or with the military belt, is to make a knight^f. The sacred are the holy devotions in the church, att or before the receiving of the dignity; whence also to consecrate a knight^g was to make a knight in both kinds of ceremonies. The sword and armes were of speciall use. Of both (as neer as I may in the order of time) I shall say something. The antientest mention of any courtly ceremonies, used at the creation of a knight with us, is that of king Alfred knighting his graundchild Athelstan, who was afterwarde king, by giving him a purple robe, a belt sett with precious stones, and a saxon sword with a golden scabbard^h.

^e MS. in recept. scaccar. Westm. 1. c. xliii. Reg. orig. f. 100. ^f 2 Tit. hon. p. 772.—Armīs militaribus donare, et cingulo militari, i. e. militem facere.

^g Consecrare militem.

^h Malmesbury de gest. reg. lib. ii. c. 6. Quem etiam praematurè militem fecerat, donatum chlamide coccinea, gemmato baltheo, ense sax-
onico cum vagina aurea.

Ingulphus¹, that lived att the conquest, speakes of ceremonies in use with the English Saxons before his time, a solemne confession, a vigil in the church, receiving the sacrament after an offering of the sword on the altar, and redemption of it, and the priest's putting it on him that was to be created. And this he saith was the custome of England in creating knights: butt that the Normans disliked it, and held such not to be lawfull knights butt vulgar and common persons, and changed that custome. Neverthelesse we find the offering of the sword on the altar, and the other ceremonies, continued in the following ages: as John of Salisbury^k attests, that a solemne custome was taken up and used, that the very day when any one was to be honored with the girdle of knighthood, he should solemnly go to church, and by laying and offering his sword uppon the altar, vow himselfe (as it were) by making a solemne profession to the service of the altar; that is to say, promise perpetuall service and obsequious duety unto the Lord. And Peter of Blois saith, "att this day young knights and soldiers receive their swords from the altar, that they might professe themselves sons of the church, and to have taken the sword for defence of the poore, for punishment and revenge of malefactors, and delivery of their countrey^l;" an excellent instruction for knights, what they are to doe, and in the following words what they are to avoid: for (saith one author) "in these dayes, since they are become adorned with the king's cincture, presently they arise against the annointed of the Lord, and rage uppon the patrimony of Christ crucified."

William Rufus was dubbed knight by Lanfranke the archbishop. Butt att a synode att Westm. a cannon passed that no abbots should dubbe knights^m.

¹ Ingulphus, p. 901.

^k De nugis curial. lib. vi. c. 10.

^l Epist. 94.

^m Math. Paris hist. Angl. p. 14.—An^o 1102.

King H. 1. propofing, before the marriadge of his daughter to Geffrey of Anjou, to knight him, defires the earle to fend his fon to him to Roan, and there made him knight with many ceremonies perticularly expreffed by the authorⁿ. There were putt uppon Geffrey d'Anjou harneffe of double maile, and gilt fpurres, a fhield of lions of Anjou was hung on his necke, a rich helme putt on his head, and an armed fpeare putt in his hand, and laft of all a fword was brought him out of the king's ftore; thus armed, he mounted a Spanifh horfe given him by the king: and his five companions had likewife armes, fwords and like robes and enftignes of honor given them, and were thus made knights with him.

Afterwards kings were wont to fend their fons unto the neighbour princes, to receive knighthood att their hands; thus was our king H. 2. fent unto David king of Scots, and Malcome king of Scots fent to our king H. 2. to take militarie or virile armes; for thefe termes and phrafes, and the fword and girdle, gilt fpurres and other ornaments were in that age. When Thomas Sturmy was to receive this dignity from king John, the fherife of Hampfhire was commaunded by writ to deliver to him a faddle and furniture and robes, etc. when he was to be made knight, and to account for it att the exchequer^o.

King H. 3. knighted Alexander 3. king of Scotland, adorning him with the military girdle. After this is a writ fent from Fraunce by the king, to the mafter of his wardrobe, to deliver to Gaucher de Gomartin, who was to take the armes of knighthood, neceffaries for the militia of him and his companions. Another

ⁿ Fauian, in theatr. honor. lib. iii. p. 577.
dorfo.

8 6 Jo. reg. rot. clauf. m. 20.

writ to the same officers, to find necessaries for the militia for two others, who were to take military armes, as was used to be found for other new knights^p.

Under E. 1. all things, besides their horse and armes, were given them out of the wardrobe^q. And in this king's time, as in his father's and succeſſor's, went forth the writs for all who had ſo much yearly revenue to take military armes: as hath bin before in part noted. Before his voyage into Scotland this king, to grace it, by proclamation ſummoned thoſe who were to be knights by hereditary ſucceſſion, and had wherewith to maintaine the degree, to appear att Weſtminſter att a day, to receive the ornaments of a knight, (ſaving the equipage of horſes) out of the king's wardrobe: thither came three hundred young gallants, the ſons of earles, barons and knights, they kept the vigile in the new temple; the next morning the king gave his ſon the girdle of knighthood and the dutchy of Aquitaine; the prince went to Weſtminſter to knight his companions, and ſo great was the preaſe of people, that two of the knights were thronged to death, and many fainted; the prince girt the reſt of his companions with the order of knighthood.

Under E. 2. Sir Richard Rodney was made knight in the preſence of the earle of Pembroke, who girt him with the ſword; and the lord Berkeley putt on one ſpurre uppon his right foote, and the lord Baldismere putt on the other on his left foote, in the halle; and this being done he departed with honor^r. Judge Thirning relates, that he heard of a lord who had iſſue a ſon, and carryed him to the font; and preſently, as ſoon as he was baptized, tooke his

^p Math. Paris, p. 1103. and 1000.—37 H. 3. rot. Vaſconiae clauſ. m. 17.—37 H. 3. Rot. Vaſcon. clauſ. m. 18.

^q Math. Weſtm. 1306. ſeu 34 E. 1.

^r Apud Glouer. Somerſet. De nobilitat. civili an^o 1414.

fword, and made him a knight'. Heere we see the use of a fword only (which it seemes was by a gentle stroke with it) in the creation. The stroke was in like sort to be given, with a fword delivered to the king (or his lieutenant that had power of creation) by him that was to be created, and that with both handes; and the name of knight to be imposed att the giving of it, and an antient knight to be assigned that should putt on the spurres on the new knight, and performe a vigil with him the next night: att least this forme was to be used when the dignity was given before a fiedge, or in the field'. Butt in later ages only a gentle stroke with the fword, on him which is to be knighted kneeling, with the wordes, "be a knight in the name of God, or rise up fir knight", or the like, spoken or manifested by the king (or those that have authority from him) are the usuall ceremonies. It is an ingenious description of a knight by our english poet:

" A knight there was, and that a worthy man,
That fro the time that he first began
To riden out, he loved cheualry,
Trough, honor, freedome, and curtesy.
Full worthy was he in his lord's warre,
And therto had he ridden no man so farre—
Att Leys was he, and att Sataly,
When they were wonne, and in the great fee,
Att many a noble army had he be.
Att mortall battailes had be ben fiftene,
And foughten for our faith att Tramiffene—

* 7 H. 4. f. 8. Brooke, title Addition. 17.
lib. i. c. 3.

" Soiez chevalier au nom de Dieu. Avancez chevalier.

* Upton de re militari, MS.

And evermore he had a foueraigne prife,
 And though he was worthy he was wise,
 And of his sport as meeke as is a maid.
 He never yett no villany ne said
 In all his life, unto no manner wight.
 He was a very perfit gentle knight^w."

In the mannuel or common prayer booke of elder ages, among other rites of the english church before the reformation, is a forme of blessing the sword of a new knight, who kneeling before the altar, the priest sayes this prayer:

" God, the protector of all that hope in thee, be present att our supplications, and graunt to this thy fervant, who with sincere heart desires to be first girt with the military sworde, that in all things he may be protected and defended with the helmet of thy power: and as thou didest bestow on David and Judith the power of fortitude, and victory over the enemies of their nation; so being armed with thy assistance against the cruelty of his enemies, he may every where be conqueror, and proceed to the defence of the holy church, by Christ our Lord^x."

After other prayers, and the priest sprinkling with holy water, the knight girt with the sworde, he departes in the name of the Lord.

We have a late case in queen Marie's time^y, where the 4 knights, in a writ of right, appeared girt with swordes uppon their gownes.

^w Chaucer, prologue to the knight's tale. ^x Agend. eccles. Argentinenf. f. 279.—Deus, cunctorum in te sperantium protector, adesto supplicationibus nostris, etc.
^y M. 1 et 2. P. & M. Dyer, f. 103. b.

And as there was much and constant ceremonies touching the armes, and girding with swords att the creation of knights: so there are some in the degrading of them, which is threatned by the king's master cooke who, when the knights come from dinner, shoves them his knife, and admonisheth them that they prove good and faithfull knights; which if they doe not, he threatens them to cutt off their spurres^z. Which is part of the judgement of degradation, as appears by the judgement given against Sir Andrew Harcley, earle of Carlisle, under E. 2. that his gilt spurres should be cutt off from his heeles, and is thus sett forth in an old story. That the earle was nobely arrayed with a sworde igurde, and ihosid, and isporid; Sir Anthony Lucy, one of the judges, spake to him thus: "fir Andrew, the king dede unto you much honor," etc. then telles him of his treasons against the king, and that by his punishment others should take example. Then the old English goes on; "tho commanded hee a knave anoon to hew of his spores of his heles, and after hee let breke the swerd over his heed; and after he lete him unclothe of his taberd and his hood, and of his furred cotes, and of his girdle." And when this was done, Sir Anthony said to him, "Andrew, quoth he, now ert thou no knight, butt thou art a knave:" and then the judgement for treason was also given^a.

In the judgement of treason given against Sir Ralph Grey, under E. 4. the high constable of England sayd to him, "the king hath ordeined, that thou shouldst have thy spurres stricken off by the hard heeles, by the hand of the master cooke:" then the rest of the judgement goes on^b. The like ceremony was used in the

^z 2 Tit. hon. p. 820.

Walsingham, p. 118.—The Fruit of times.

^a Placita coram rege. H. 18 E. 2. Rot. 34. et 35.

^b Stow, Annal. p. 693, 694.

degradation of a knight, uppon a judgement in parlement in king James his time^c. So much regard was had to the ceremonie of the armes, the spurres, and girding of the sword of a knight!

I shall conclude this discourse, as to England, with a petition of the commons in parlement to king E. 3.^d “that the writs, to summon the next parlement, may charge every sherife for his countey to returne two knights girded with swordes:” since which time, the writs of summons have had this clause (girt with swordes) unto this day^e.

Among the Hebrewes it was noted, as the usage of great men and rulers, to be equites, riders, as that passage testifies: “Speake ye that ride on white asses, ye that sitt in judgement.” So it is said that Jair had thirty sons that rode on thirty asse colts; and Abden had 40 sons, and 30 nephewes, that rode on 70 asse colts; and they were honorable among the people, their fathers being judges of Israel: and in the like sence is that of the wise man, “I have seen servants uppon horses, and princes walking, as servants, uppon the earth^f.”

The psalmist sayth, “gird thy sword uppon thy thigh, O thou most Mighty, with thy glory and thy majesty^g.” And as the sword is generally in scripture used in the sence of punishment and misery; so it is sometimes expressed in the defence, as a blessing: so is it sayd of the Lord himselfe, in the blessing of Moses, “happy

^c 18 Jac. reg. rot. parl.

^d 13 E. 3. Rot. parl. n. 23.

^e Ceint

des esas. des espees. Milites gladiis cinctos.

^f Judg. v. 10.—Judg. x. 4.—

Judg. xii. 14.—Eccles. x. 7.

^g Psal. xlv. 3.

art thou, O Israel! who is like unto thee, O people faved by the Lord the shield of thy helpe, and who is the sword of thy excellency^h ?”

The ancient footsteppes of creating knights, if any where (saith our great antiquary) may be found from that custome of the Germans remembred by Tacitusⁱ: “that it was not the manner for any one to take armes in hand, before the state allowed him as sufficient for martiall service; then in the publique councell, either one of the princes, or the father of the young man, or one of his kindred furnished him with a shield and a javelin; this with them standeth instead of a virile gowne; this is the first honor done to youth. Before this they seeme butt as private persons, afterwards are accounted as members of the commonwealth.” This is compared to that custome of the Romans, to give to those who were entring into man’s estate, and whome they would honor, a virile gown; and they had a military gowne, as the first ensigne of honor. Caesar relates almost the same thing among the Gaules, “that they would not permit their children publicely to come unto them, but when they were grown up, and were fitt to susteine the rewards of military duety^k.”

In the state of Rome, the equestrian order was betwixt the senators and the plebeians; and none were of that order butt such as the censors chose into it, and gave them a publique horse and a ring^l.

In the german empire a dubbed knight^m, or the knight of the spurre, is as with us; nor is the ceremony of making him much dif-

^h Deut. xxxiii. 29.

ⁱ Jani Anglor. Seld. p. 44.—De moribus Germanor.

^k Togam militarem.—De bel. Gal. Suos liberos, nisi cum adoleverint ut munus militiae sustinere possint, ad se adire non patiuntur.

^l Rosinus de antiquit. Rom. lib. i. p. 32.—Qui neque senatores neque de plebe, quibus publicus equus et annulus à censoribus datus.

^m Ritter Geschlagen.

ferent from ours: regularly, the person to be honored kneeles, and the emperor's gentle striking him with the sword, and the pronouncing him to be a knight, creates him. The originall of this order, Selden holds, came from the Germans, uppon that passage of Tacitus before noted; and out of Cassiodor, of an instrument wherby Theodoric king of the Goths adopts one to be his son by armes, a grace not given by nature which may deceive us, butt by judgement: "we give thee (saith the instrument) horses, swords, shields, and other instruments of warre; but, which is strongest of all, our judgement; take therefore the armes, to be profitable both to me and thee," &c. Another the like is of Theodorique, king of the East Gothesⁿ. This custome is mentioned by Procopius, about the adoption of Cosroes son of Cabades, king of Persia, which the father desired, that his son might therby have pretence to the roman succession: Justin the elder finding this, offered to adopt Cosroes according to the manner of the barbarous nations, by armes, butt not by writing; which would not satisfy the Persian^o. From hence is that of Warnfred, "to receive armes from the king of a forein nation^p:" and from this use of those northerne nations came the fashion of knighting into the empire; for the girding with the sword, putting on spurres, and the like, which made up butt an adoption by armes, have bin often used in giving this dignity both in the empire and elſewhere, among the posterity of these nations. The solemnity of girding, of giving "a blow on the necke," putting on spurres, and divers holy ceremonies, also are

ⁿ Titles of Honour, p^t ii. p. 491—3; edit. 1726 (M) Cassiodor. Var. lib. iv. for. 2. Olaus Mag. hist. Septen. lib. viii. c. 5. 6. 9. et 10. *Damus quidem tibi equos, enses, clypeos, et reliqua instrumenta bellorum, sed, quae sunt omnimodis fortiora, largimur tibi nostra judicia.*—Should not the *sed*, in this passage, be read *et*? (M) *Sume itaque arma, mihi tibi que profutura.* — Cassiodor. Var. 8. form. 1.

^o "Οτι δὴ ὡς βαρβάρῳ προσήκει, δηλονότι ἔ γράμμασιν οἱ βαρβαροὶ τῆς παίδας ποιοῦνται, ἀλλ' ὅπλων σκευῇ. ^p De gest. Longobard. lib. i. c. 23, 24.

found in good testimonies that concerne this dignity in the empire. Charles the great ordaines, that the governor of Friesland, by girding with a sword, and striking the person created on the eare (as the custome then was) should make knights. Frederique 1. held a feast att Mentz, to declare his son Henry knight, and to gird the most powerfull sword uppon his thigh. So the ambassadors of the easterne empire importuned the same emperor to knight Frederique duke of Swaben; the words are, “to gird him with the sword⁹.” Butt the blow on the eare or cheeke was also (it seems) in use for the most common ceremony, and is supplied or meant by the stroke with the sword. Wheruppon Jo. de Beka writes, that in his time many knights, omitting sumptuous solemnities, received the order of knighthood by a stroke on the eare or necke¹. The emperor Sigismond knighted Signell, a gentleman in Fraunce; and besides the stroke with the sword, and the girding, he gave him one of his gilt spurres². In the emperor’s letters patents of the creation of a knight, he saith, “we adorn thee with the girdle, and belt,” and “gird thee with the sword of fortitude,” &c. Sometimes giving a shield, and the putting on a helme were antiently added to the ceremony of girding with the sword³. These were used by the emperours in knighting others; and, by some great bishops in knighting of the emperors. And many notable things are in the orders praescribed by the princes of the empire, for the rule of the military order, for William chosen king of the Romans to be

⁹ Hauconius de rebus Fris. et Franc. Mennen. in delic. equest. p. 7. Fauin. in theat. honoris, lib. iii. p. 529. Arnoldus Lubecensis hist. Sclau. lib. ii. c. 3. Gladium super femur ejus potentissimum accingeret. Radeuicus de gest. Fred. 1. lib. i. c. 6. Gladio accingi.

¹ Hist. episc. ultrajeſt. p. 65.

² Till. de reb. Gall. lib. ii.

³ Petrus Caleſatus, lib. de equeſtr. dignitat. Fortitudinis gladio accingimus.—Goldaſtus ad Winsbeck poet. Germ. p. 402.

made knight; and the ceremony of a stroke on the necke was there used^u.

Also in the pontificate of Rome is the forme of the creation of a knight, and amongst the rest the sprinkling of the sword with holy water; and then the pope gives the naked sword to the young knight kneeling, into his right hand, saying: "take this sword in the name of the Father, of the Son, and of the Holy Ghost, and use for the defence of thee, and of the holy church of God, and to the confusion of the enemies of the crosse of Christ, and of the christian faith; and, as much as humane frailty will permit, hurt no man unjustly therewith; which he vouchsafe to graunt who, with the Father and the Holy Spirit, liveth and reigneth God for ever!" Then the sword is putt into the sheath, and the pope girds the new knight with it, saying: "Gird thy sword uppon thy thigh, O thou most mighty! and observe that saints have not subdued kingdoms by the sword, butt, by faith." Then the new knight riseth, and shakes the sword naked over his head three times, and putts it up againe in the scabberd: then the pope gives to the new knight a kisse of peace, saying, "peace be with thee;" and taking the sword naked againe into his hand, he gently strikes the new knight, kneeling before him, three times on the shoulder, and sayth, "Be a knight, peaceable, valiant, faithfull, and devout to God." Then the sword being putt up againe, the pope gives to the new knight a gentle stroke, saying, "Be thou raised from the sleepe of malice, and watch in the faith of Christ, and laudable fame;" and the knights standing by putt the spurres on the new knight: after prayers the new knight kisseth the pope's hand, and, laying downe his sword and spurres, departs in peace.

^u Lamb. Schafnaburg. in Chron.—Goldast. constit. tom. iii. p. 400. Snous hist. Batav. lib. vii. Dempster. lib. iii. de jurament. cap. 19.

William de Badenfel, a german knight, sayes in his being att the holy land, "I made two knights uppon the sepulchre, girding them with swords^w." In France the making of a knight bachiler is described to be thus: when a squire who hath served long in the warres, and hath sufficient to maintaine his estate, is uppon service, he must advise the chiefe of the army or a valiant knight, and comming before him, make his demaund thus; "Knight, in the name of God and of St. George, give me the order^x." Then the knight, or chiefe of the warre, must draw his sword, and striking the demaunder three times, must say unto him; "I make thee a knight in the name of God, and of my lord St. George, lawfully to keepe the faith and justice, and to defend the church, women, widdowes and orphanes^y."

In the *Gesta Romanorum* and *Sallade*, the creation is sett downe: that the prince, or other knight, gives him that is to be honored the stroke, and girds him with the sword of gilt, and the golden spurres are afterwards putt on; and he is to make a profession to maintaine the christian faith, the right of ladyes, widowes, and orphanes^z. Du Tillet sayth, "the king or prince girdeth about them a sword, in signe that they should abide and keepen him, of whom they have taken their despences and dignity^a."

Francis the first of France, restored the old ceremonies which had bin left off: butt the author complaines, that in his time honors

^w Hodeporic. in terram sanctam, Feci duos milites gladios accingendo.

^x Liure appel. Division du monde. — Chivalier, au nom de Dieu et de Sainct George, donnez moy l'ordre.

^y Je te fais chivalier, au nom de Dieu et de mon seigneur sainct George.

^z Prince ou aultre chivalier luy donnera l'accolte, & luy ceint d'espee dorée; puis luy sont chaussez les esperons dorés.

^a Booke of Chesse-play, translated by Caxton.

were adulterated, and the dignity of knighthood promiscuously conferred upon flatterers, powerfull and gracious men, or rich men who never saw warre; even without ware or merchandize, the testimony of eminent virtue, as a reward for money^b. And their chancery phrase is, "to be adorned with the military girdle." If any one with them, not being a gentleman (on the father's side) had received this dignity, he was to be degraded, and that by his lord's cutting of his spurres upon a dunghill. To the same purpose it is in an old manuscript of the state of France^c.

In Spayne, the dignity of the knights of the spurre was in great esteeme. After bathing, his vigill past over, and a masse heard, he that was to give him the dignity came to him, and askt him, if he desired to have the order of knighthood? Upon his saying he did, he askt him, if he would keepe the lawes of knighthood? Which graunted, he either by himselfe or some other knight putt on his spurres, then girt him with a sword^d; the more antient course as is said in the Partidas was, that he should be wholly armed, saving his head only, which remained uncovered: then drew out the sword, and putt it in the right hand of him that was to be created, and gave him an oath, that he should not refuse to dye, either for defence of his law, or of his king, or of his countrey. The oath being taken, he gave him a stroke on the necke, that he might the better remember what he promised, saying, "God assist you in the performance of that which you have promised." Then he that

^b Hadrianus Junius Batav. c. xix. The words, as recited by Mr. Selden, vol. iii. p. 591, (in the edition quoted above) are these. At alii hoc seculo inolevere mores, quando honores adulterantur, dignitatis equestris gradus adulatoribus, potentibus et gratiosis hominibus, aut opulentibus, qui militiam nunquam viderunt, etiam citra spectatae virtutis testimonium, ceu emptitia merx promiscuè confertur. (M) Vincentius Lupanus de magistr. Francorum. c. de equit. ordin.

^c Choppin. de jurisdic. Andegav. lib. i. c. 63. §. 2. Faire trencher ses esperons sur un fumier.

^d Partid. 2 tit. 21.

lib. xiii. xiv.—Zuritam in Annal. Arragon. lib. xii. c. 34.

created him, and the rest of the knights present kissed him; and all other knights that mett him in the yeare following were bound to doe the like, as a testimony of their faith and love to him^e.

Alfonso 10. king of Castile, in the release of his rights in Gascoigne to prince Edward, son of our king H. 3. recites, that he had girt him with the girdle of knighthood^f. And this was of so great esteeme among them, that sometimes they named the year from thence: as in a charter to the monastery de Santo Benito, it is said to be in that yeare that Don Edward, eldest son and heir of king Henry of England, received knighthood in Burgos from the king Don Alphonso afore said^g. This old way of knighting became discontinued, and the king had liberty to use those ceremonies or not: butt the knight thus made was bound to give speciall honor to him that created him, and to his padrino that ungirded the sword from him^h. He was bound to protect ladies, and not to sell or pawne his horse or armes without the commaund of his soveraigne, or inevitable necessity, nor venture them att play. His horses and armes (as in England) were not to be taken from the knight in any suit, unles nothing else was to be found, and then the horses of his own saddle were priviledged. The manner of degrading him was, the king commaunded an escudero, or some gentleman, to putt on spurres on the knight, and to gird him with a sword; and then that he should cutt in funder the belt or girdle behind, and also the spurre-leathers; which done, he lost the honorary title of knight for ever after.

^e Pur su ley, pur su fennor natural, pur su terra.—Una Pescoçada. ^f 39 H. 3.
 Rot. Vascon. m. 12. et Mat. Westm. an^o 1254. Cingulo eum accinxerat militari.
^g Guardiole de la nobleza, c. xxxv. En el anno que Don Odoart, fijo primero et heredero del rey Enrice de Angleterra, recibio cavallerio en Burgos del rey Don Alphonso sobredicho.
^h Ordinament. Castiliae, lib. iv. tit. 1. lib. viii. et recopilat. lib. vi. tit. 1. lib. vi.

In Swedland (saith our author of the titles of honorⁱ) and in those northerne kingdomes, the making of knights is sometimes used with more solemnity than only the slight stroke of a sword; the belt, sword, and shield were sometimes given together with fiefs: and I may hope for excuse in setting downe the forme therof, bicause of the perticular reason which I have to honor that order bestowed by their princes^k.

The forme of the oath, which for the substance therof is worthy to be knowne and followed, is to this effect.

I N. doe wish that God, and the blessed virgin and St. Eric, may be so propitious unto me, as I will, to the utmost of my power, by my life and goods defend the catholique faith, and the holy gospell, and keepe and protect the church and the ministers therof in their liberty and immunity; and to stand against all that is wicked, and to keepe peace and justice, and to defend pupills, and orphanes, virgins, widdowes and the poore; and I shall be faithfull and secure to my king, and to my kingdome or countrey, and justly performe and exercise the military state, to the honor of God, according to the best of my power: so helpe me God, and all his saints!

Besides this way of creation of knights with usuall ceremonies, as with us and in other kingdomes, the king of Sweden doth it sometimes by letters patents under the great seale of Sweden; a precedent wherof is extant to Sir Henry St. George, who was sent to Gustavus Adolphus with the order of the garter, and by this king honored with a patent of creation to be a knight, made in his campe in the view of his whole army. And the patent desires all princes and

ⁱ P. 458.

^k Olaus histor. Septentr. lib. xiv. c. 7. Mr. Whitelock had the order conferred upon him, in Sweden. (M)

states to allow therof: and it were a wrong to soveraigne majesty not to allow of a knight made by any soveraigne prince, the order being universall, and allowed by all princes in all countries whatsoever.

In Scotland, the title of knight is given, after an oath, and sometimes with more ceremony than att this day in any place of the world, and neerer the ancient fashion when the girding with a sword, and putting on of spurres were necessarily used in the giving of it¹. The manner of it may best be seene, by the knighting of those gentlemen who carry the ensignes of honor before the baron or viscount att their creations; who with due regard thanks him that created him, and craveth favour that, according to the antient custome, the gentlemen bearers of the ensignes of his honors may be dubbed knights: the lord commissiонер commaunds the same to be done, and the king att armes calles the gentlemen by their names, and makes a speech to them, they kneeling before the lord commissiонер; then causeth them to hold up their hands, and take an oath much to the same effect as the oaths formerly recited. Then the king att armes gives the sword of honor to the lord commissiонер, who striketh the first of the gentlemen thrice with it, on the right shoulder, saying, "Avances, chivalier," and att the same time his spurres are putt on by some antient knights present: then the king att armes pronounceth his stile, Sir J. N. of O. knight; then the heralds and purfivants, the trumpets sounding forth att the windowes, proclaime it; and so the other gentlemen are knighted.

In Ireland the lord deputy usually hath the power of making knights, by his commissiön. Their antient manner of making knights, especially of the sons of their kings^m, was, that the young

¹ Cambd. Britt. p. 684.—Demster de Joram. lib. iii. c. 19.
vol. iv. c. 63.

^m Froissard,

knight, att his making, runnes with slender lances, such as he can weld being commonly butt 7 years of age, att a shield sett up on a stake, in the middle of a meadow; and the more launces he thus breakes, the more honor continues with his dignity. And this was the forme of making young knights in their countrey.

My excuse for being so large upon this subject may be pleaded from the great antiquity, and universality of this title, wherof it is said, that king and knight goe through the world; and therefore, may require the more time^a.

^a Calvin's case post-nati. Co. rep. 7.

C H A P. L

Most fitt.

BEFORE it can well be discovered who are “most fitt” to be chosen members of this supream publique court, and councill of the whole kingdome, it may be requisite to consider who are unfitt, and incapable to be elected to this great and high councill and judicatory.

By the law of England, he who is under the age of one and twenty years is not sui juris, cannot dispose of himselfe or his estate, nor mannage his owne affayres, or oblige his person or fortune; nor can sue, or be sued in his own name, or doe such ordinary legall acts as a man of full age, that is, above 21 yeares of age may doe: much lesse fitt is one so under age, whom the law will not trust in his owne private affayres, fitt to be trusted with the managment of the great and weighty affayres of parlement, which in so high a measure doe concerne the fortunes, liberties and lives of all the people of England. And therefore by the custome and law of parlements, he that is under the age of 21 years is not held qualified, nor fitt to be a member of either house. Wherof there be severall resolutions in the journalls of parlement yett extant: and therefore such a person within age cannot come, under the qualification of this writ, to be one of the most fitt to be elected a knight of the shire to serve in parlement.

Among the Jewes it was a qualification for members of the sanhedrim, that they ought to be above 20 years of age; and the

talmud glosse is, that they were not fitt for the great buisnes of that councell, untill they were 40 years old. Butt this is not understood of a man to be unfitt bicause he was old, they are commonly most fitt for councell; butt he who was broken with age^a, so that he became altogether unfitt for buisnes; if he was debilitated by age, wanting strength and memory, then he was held not fitt. Butt if such imbecillities were not uppon him, how old soever he were, they did not reject him: nor hold him unfitt though under forty years old, if he were otherwise fitly qualified. Theruppon some call Solomon, who (as is affirmed) was butt 12 years of age when he began to reigne, an old man, bicause of his wisdom; and Rehoboam, who was forty years old when his father dyed, they call a young man, bicause he followed the young mens councell.

Parte of the oath of the Athenian senators was, that they were aged thirty years; before which age they were held unfitt to be senators^b. The 44 arbitrators, elected by the archonti in Athens to be their assistants, were every one of them to be past 60 years old. Lycurgus esteemed the crowne or honor of a man's life to consist in old age; and ordeined by a law, that age should be more highly honored than the best strength of youth. And to extremity of age they were employed in publique affayres, and encouraged in duety to apply themselves to virtue. The 8 quinquagenarii, men of fifty years old a piece, were commanders of the army: and in all employments they gave most respect to men of greatest age and experience.

The Romans did the like, and therefore called their counsellors senes and senatores, and their councell senatus. Their appellations

^a *Ultimae senectutis hominem.*

^b *Demosthen. in orat. contr. Timocrat.*

of patres and patritii are testimonies of the veneration they bare to old age; yett their account was not only of old men by age, butt of old men by wisdome^c.

The fenators chosen by Romulus, were of such who were most wise, not who were againe children by age: and those they called and chose to be fenators, who were eminent in age and virtue^d. Sigonius affirmes the fenatorian age to be 21 years as with us^e. By the civill law 25 years is the age which we terme full age: butt in Rome and all other countreys, young men in age or manners were not held fitt for the great imployments of publique councells; butt old age and experience were held most fitt qualifications for counsellors, and were highly regarded according to that binding law, "thou shalt rise up before the hoary head, and honor the face of the old man^f".

By the law of England, a man deafe and dumbe, or blind, or an ideote or madman, are not capable to be members of parlement. Nor persons attainted of treason or felony, or outlawed. And as the resolution was in 1 H. 7, those parlement men who had bin attainted by the usurper yett, being attainted, they went out of the house untill a bill was past for reversing that attainder, and then they were re-admitted; butt it was not held fitt for them to be members of the parlement, whilest they stood (though by such a power) attainted. In like manner such as are guilty of bribery and corruption, or other heynous crimes, are not fitt to be chosen to serve in parlement; butt if they be members of parlement, they will be, uppon complaint and prooffe against them, removed againe, and

^c Senes aetate, senes sapientiâ.
saperent. Ætate et virtute praestantes.
Rom.

^f Lev. xix. 32.

^d Plut. in Romul. Per aetatem maxime
^e Lib. ii. de antiquit. jur. civium

expelled by judgement of parlement from that high trust, as unfitt for it. And heerof there are many antient precedents in the rolles of our parlements; and of later times, in the case of the viscount St. Albans, and of the earle of Middlesex yett fresh in memory, and in divers others extant in the journalls of the houses^e. Aliens are not fitt to be chosen to serve in parlement; which extends not only to forein aliens, butt to aliens to the countey where they are elected; if the statute were observed, that none butt residents in the respective counties, cities and buroughs where they are chosen^h, be elected. Butt this law, by time and connivence to contrary practise, is become as if it had not bin made.

The Hebrewes were very severe as to the fittnes and qualifications of their publique counsellors. With them the comelines of the person was much regarded; so that they would not admit to a place in the sanhedrim, any whose stature, countenance and demeanor was uncomely: as one that was blind of both eyes, or of one eye, or deformed, mayhemed, deafe or thick of hearing, or the like; and they thought him unfitt who was childlesse or an eunuchⁱ, wherof the poet gives the reason:

An eunuch is not moved with piety,
To none affording any clemency.
He takes no care for children, nor is he
For kindred studious: if all might be
Alike unhappy, this perhappes would please;
Society in grieve, the mind doth ease^k.

^e 18 Jac.—21 Jac.
coth. c. vi. f. 65. 1.

^h 1 H. 5. c. i.

ⁱ Gemar. Babilon. ad tit. Mena-

^k Claudian. lib. i. in Eutrop.

— Eunuchus nullâ pietate movetur,

Nec generis nativæ cavet: clementia cunctis

In similes, animosque ligant consortia damni, etc.

Such were especially debarred from judging in capitall causes; butt were admitted to be judges of idolaters, as more cruell than others, bicause they held cruelty to them was mercy ¹. The rabbins agree idolaters to be unfitt for members of the sanhedrim; also sabbaoth-breakers, usurers, and those who taught the flight of pigeons, or made gaine of the fruits of the seaventh yeare, or yeare of remission. Likewise players att dice, or other games wherin, fortune only being the judge, they covet gaine; and the reason why they held gamesters unfitt was, because they esteemed them infamous, chiefly in regard that therby they were presumed to be covetous: and the gaine therby arising they counted a kind of rapine, bicause it came by fortune, and bicause such games and artes were in no wise conducive to the publique good. They give the reason against gamesters, bicause they doe not accustome themselves to those things which tend to the settlement of the age wherin they live, or which are profitable to humane society: yett that of gamesters was understood of some sports immoderately used and traded in, not of sports seldome used, nor of honest recreations; nor if a man left his trade of gaming, or of usury, was he then unqualified ^m.

And by usurers not being qualified, was understood the borrower as well as the lender ⁿ; and it was held unfitt for those of the sanhedrim wholly to buisy themselves about any other matters butt the law and retribution of benefits, or charity and offices of courtesy, and merchandise, and such arts and workes as doe conduce to the publique good and benefit, (an excellent precedent for all counsellors): butt unlucky and evill actions, they held, did make men

¹ Gemar. Babilon. tit. Sanhedr. c. iv. f. 36. ^m Rabbi Obadiah Bartenor.
ad Misn. tit. Sanh. c. iii. §. 3.—Gemar. Babilon. c. iii. f. 24, 25.—Seld. de synedr.
lib. ii. cap. ix. S. 5. ⁿ Deut. xxiii. 19.—Lev. xxy. 37.—Selden, ubi suprà.

unfitt for so great an imployment as to be members of publique counsellors.

The vice of gaming was likewise forbidden by the roman lawes, and the buying a draught of a nett, or of any thing uncertaine, and of hunting, hawking, and the like, if they were for profit's sake; and such drones, or covetuous persons, were by them and by the Graecians, and by all nations, (whose perticular lawes in this point would be too tedious to recite), as also all criminous, vitious, deformed, unjust and scandalous persons, held unfitt and unworthy to be publique counsellors; and they would remove and expell any such crept in among them^o.

In the consideration of those who are most fitt to be members of supream courts and counsellors, as our parlements are, I shall borrow my methode from the rabbins, who reckon seaven qualifications of counsellors and magistrates, according to the counsell of Jethro to his son-in-law Moses, in the choice of judges^p.

1. Wisdome.
2. Humilitie.
3. The feare of God.
4. Contempt of riches.
5. The love of trueth.
6. The love of men.
7. A good reputation.

First, Of wisdome it will be proper to speake uppon another occasion.

• Lib. 10. D. de contrahend. emp. et lib. vii. de heredit. vel actione vendit.—Rosin. de antiquit. Rom. p. 278, 279.

^p Exod. xviii. 21.—Deut. i. 15.

2. Of humilitie somewhat hath bin said before ; and surely nothing of outward deportment makes a man more fitt, or more likely to be chosen a publique counsellor, than humble words, humble gestures, and humble actions, which take the minds and affections of all men, especially of english men: butt a tedious vexatious attendance on great men, a supercilious neglectfull carriage of senators, who can beare? God hath declared, "him that hath an high looke and a proud heart, I will not suffer^a." The roman candidates found how distastfull it was to carry themselves loftily before election, and therefore to show their humility (as hath bin before noted) used to salute every cittizen whom they mett with some friendly and familiar compellation. Butt the stories of humility both of english and of other nations (though more were to be wished) yett are too many to be heere recited: those of the holy story, and the advice for it, cannot be too often repeated, and are to be found in the lives of Abraham, of Isaac, of Jacob, of Joseph, of Moses, and all the patriarches; of Boaz, of the princes of Ephraim, of all the good kings, priests and prophets of God^b. The holy counsells to humility are many and excellent: the apostle adviseth all people to be clothed with humility; and gives the reason, for (saith he) "God resisteth the proud, and giveth grace to the humble^c." The wise man assures us, "that before honor is humility:" he asserts likewise, that "by humility, and the feare of the Lord, are riches, and honor, and life^d." The sure way to be in favour with men, to be chosen to preferment and honor, is to be humble, which will bring us not only in favour and to honor with men, butt with God likewise. Job tells us, that "God will save the humble person." And the psalmist affirmes, that "God hath heard the desire of the

^a Psal. ci. 5.

xxxviii.—Acts viii. 31. etc.

12.—Pro. xxii. 4.

^b Ruth ii. 8.—1 Sam. xxx. 11.—2 Chro. xxviii. 15.—Jer.^c 1 Pet. v. 5.^d Pro. xv. 33. & xviii.

humble^u." And his wife son concludes, that "it is better to be of an humble spirit, with the lowly, than to divide the spoyl with the proud^w." I shall conclude with the counsell of the apostle, "humble yourselves in the sight of the Lord, and he shall lift you up." A courteous humble demeanor towards all men begetts affection, and good opinion of a man; which is the true and best way to honor. An humble man hath lowest thoughts of his owne judgement and abilities, and is most willing to heare and to submit to better; and therefore most fitt to be a law maker.

3. The 3 qualification of counsellors, mentioned by the rabbins, is the feare of God, which indeed makes men most fitt for that great trust; and without which nothing can be done wisely by them, nor like to prosper. If the counsellors be not holy, their counsell and lawes cannot be holy; and then I am sure a blessing cannot be expected on them. Counsellors are the houses of God, and we are instructed that "holynes becomes the house of God for ever^x." Butt this argument may be referred to another word, and would take up too much of this chapter.

4. Qualification is the contempt of riches, which is also reserved for another place.

5. Qualification is the love of trueth, that is justice, and is proper for the discourse of another occasion.

6. Qualification is the love of men; and he that is not a lover of men is not fitt to be a governor of men, the institution of government being for the good of men. It is a rationall policy of our

^u Job xxii. 29.—Psal. x. 17.

^w Pro. xvi. 19.

^x Psal. xciii. 5.

law, that those laws which are made in parlement doe bind the law makers as much as any other : and therefore, if they consider the love of themselves, they must also consider the love of others in the exercise of their parliamentary power ; as they shew therein love to others, so they show love to themselves.

In the praecept of our Saviour, “ Learne of me, for I am meeke and lowly,” the greeke word there used signifies love of men ; and is taken for the nature of man, and for a virtue which doth consist in the outward supplies, by condescending to the defects of others^y : and Cicero describeth the workes of it, “ to afford helpe to those that supplicate it, to raise up the afflicted, to give safety, and to free men from daungers^z.” These are the effects of that generous humane virtue, the love of men.

The same is fully expressed by the prophet, where he saith, “ The Lord hath annointed me” (the true end of annointing) “ to preach good tidings to the meeke, to bind up the broken-hearted, to proclaime liberty to the captives, and the opening of the prison to them that are bound^a.” These are the fruits of the love of men ; these are qualities which make them most fitt to be publique counsellors. It is not to love themselves, and seeke after their private and perticular interest ; butt to love others, and to deny themselves, which allowes them to be fitt and worthy senators. All those noble and generous spirits who att any time heere, or in other countries, have adventured their lives in the service of their king and countrey, and for the publique defence, have expressed this love of men to be in them ; and deserve the love of men

^y Mat. xi. 29. Φιλανθρωπία, humanitas, amor erga homines. B. Thom. sup. epist. Paul. ad Tit. 3. Col. 3.

^z Lib. i. de orat. Opem ferre supplicibus, excitare afflictos, dare salutem, liberare periculis homines.

^a Isai. lxi. 1.

again. The stories of them would fill a volume, which can never be too great.

Whatsoever good lawes, wholesome counsell, and righteous judgements have bin given in our parlements, or in any publique counsell, are so many testimonies of the love of men in those worthy senators. Philosophers and moralists have much discourse on this argument, and divide this virtue into fixe heads. 1. Justice, loving all, chiefly virtuous men, hurting none, desiring to doe good to all. 2. Equity, tollerating the infirmities of men, knowing and not hating their manners. 3. Courtesy in demeanor towards all. 4. A desire of profiting men. 5. Meekenes in conversation. 6. Friendlines in behaviour, actions and doing good offices to all men. Whatsoever in Story comes under any of these branches is applicable to this qualification.

Butt there is no need, nor would be any end of reciting examples and authorities on this subject; ^b that of the noble Roman gives a patterne to all, who singly fought against the ennemy till the bridge was broken down behind him, and then leaped into the river, and thereby saved the citty. This verified his being of the opinion, that "it is sweet and comely to dye for one's countrey".

It was an early law given by God, "Thou shalt love thy Neighbour as thyselfe." This is quoted by the evangelist, who goes further, and injoyes us to love our ennemies^d. The same commaund is againe by him cited, and in many other texts we are putt in minde of it, and commaunded to practise it. The old law goes further also: "Thou shalt love the stranger as thyselfe." We must

^b M. Regulus. Decii.

^c Dulce et decorum est pro patria mori.

^d Lev. xix. 18.—Mat. v. 3.

love our neighbour, and we must love strangers; we must love all men. We are taught of God to love our enemies, and to love one another, whereof there is a great number of texts injoyning this duty; and the holy texts give the reason of the good of this duty. "Love worketh no ill to his neighbour, therefore love is the fulfilling of the law. And he that loveth another hath fulfilled the law. Let us love one another;" and he gives the reason, "for love is of God, and every one that loveth is borne of God, and knoweth God." There cannot be more pathetically expressions to persuade to the love of men. Our blessed Saviour, foretelling his owne death, saith, "Greater love hath no man than this, that a man lay downe his life for his friend." But when we were enemies and traitors against our God, he that "thought it no robbery to be equal with God, humbled himselfe, and became obedient unto death, even the death of the crosse, to purchase by his own blood the remission of our sins." So the apostle expresseth it. "Scarcely for a righteous man will one dye, yett peradventure for a good man some would even dare to dye; butt God commendeth so his love towards us, in that while we were yett sinners Christ dyed for us: and the end of his death was love to men, that we might live together with him in glory."

There needes no other example of love to men: and whosoever hath not this infinite free love of God towards men alwayes before his eyes, and in his desires to be a follower thereof, is not worthy the name of a senator; much lesse, of the most honorable title of a christian.

* Mat. xix. 19. et xxii. 39.—Mar. xii. 33.—Rom. xiii. 9.—Ja. ii. 8.—Lev. xix. 34.—Jo. xiii. 35.—Heb. xiii. 1.—1 Jo. iv. 7.—Lu. vi. 35.—Jo. xv. 12.—1 Thes. iv. 9.—1 Pet. i. 8. 22.—1 Jo. iii. 11. 23. et iv. 7. 21.—Rom. xiii. 10.—Rom. xiii. 8.—Jo. iv. 7.—Jo. xv. 13.—Phil. ii. 6. 8.—Rom. v. 7, 8.—1 Cor. xv. 3.—1 Thes. v. 10.

7. Qualification of fenators is a good reputation, the winning wherof (saith the viscount St. Albans) is butt the revealing of a man's virtue and worth, without disadvantage^f. Butt such as in their actions doe wooe and affect honor, and reputation, are commonly much talked of, butt inwardly little admired. If a man so temper his actions, as in some one of them he doth content every faction or combination of people, the musique will be the fuller. A man is an ill husband of his honor, that entreth into any action the fayling wherein may disgrace him more, than the carrying of it through may honor him. Discreete followers and servants helpe much to reputation^g. Envy, which is the canker of it, is best extinguished by declaring a man's selfe, in his ends, rather to seeke merit than fame; and by attributing a man's successes rather to divine providence, and foelicity, than to his owne virtue or policy: he who thus gaines a reputation may deservedly be held one of the most fitt men for publique trust and imployment. Plutarch telles us, that the contempt of a good reputation is a vice conjoynd with impudence and madnes^h. And the old poet contents himselfe, "if I can butt keepe a good reputation, I am rich enoughⁱ."

A good or bad reputation is the offspring of a man's good or bad actions, according to that answear of the graecian prince, being asked how a man might gaine a good reputation, answered, "By speaking the best things, and doing the honestest actions." With this agrees Epictetus: if thou wilt have a good reputation, "Learne to speake well, and indeavor to doe well^k."

^f Essay, of honor and reputation.

^g Fama à domesticis emanat.

^h In Alcibiade.

ⁱ Plaut. Mostell. Ego si bonam famam mihi servasso, sat ero dives.

^k Agesilaus. Plut. in Lacon. Apoth. Si loquatur quae sunt optima, et faciat quae sunt honestissima.—Stob. serm. 1. de virtut. Discito bene loqui, et bene facere conator. Μάθε καλῶς λέγειν—πειρῶ καλῶς πράττειν.

This qualification of a good reputation is the consequent of the former; he that hath the love of men in him, will performe good offices towards them, and this will surely gaine him a good reputation. And so of the contrary, as our english proverbe is; he that hath a good name may lye abed till noone, and he that hath an ill name is halfe hanged. Indeed by the law of England and of most countries, common fame or reputation is sufficient for an accusation, though not for a condemnation. So the house of commons resolved, in the case of the duke of Buckingham, in parlement, wherof I was an auditor; where Littleton distinguished between a generall voice or report of neighborhood, and a rumor which is a perticular assertion from an uncertain author¹; and this is according to Lindwood and other writers^m. Another difference hath bin taken, that where the reputation or fame is upon a generality, without any perticular specification, it was rejected; butt the party was sent to the Tower, when the reputation was perticular, that he would have betrayed the kingdome to the king of France. Noy, in that case, held, that uppon reputation or fame one might take a recognisance, or commit to prison; and it is a good ground to accuse or arrest, butt not to speake ill of a man; and proceedings are uppon it in all courts, and in the house of commons whose proceedings (saith he) are not definitive, or conclusive to condemnation, butt only by way of information, and denunciation or presentment, as the grand jury of the whole kingdome.

By our common law reputation or fame is a good justification, in an action of false imprisonment, to have arrested the party to answear the law; butt it is otherwise in an action uppon the case for scandall: bicause the first was legall, and for the publique good; the other was

¹ Parlement. 2. in. 1. C. 1.—Communis vicinae acclamatio, particularis assertio ex incerto authore. ^m F. 58. f.—En parlem^t 28 H. 6. 29 H. 6.

only to vent malice or vanityⁿ. It hath bin ruled by our judges, that reputation or common fame within the countey, that one was a rebell, or had committed a felony, was sufficient to arrest him, without any other cause: butt this is not transferrable to another; he who arrests must suspect, and it must appear that something was done, and then it is sufficient^o. In our ecclesiasticall courts, the judges proceeded to informe their consciences, and may cite *ex officio*^p.

Proceedings uppon reputation and fame have bin in parlement, in the case of the duke of Suffolke, and of the duke of Somersset, and others. Butt in the case of the bishop of Durham, who had traduced the house of commons, and was by them accused therof on common fame, the lords rejected it, bicause there was no other ground of the complaint: butt the commons resolved to record it in their house, therby to make him infamous^q; butt this was doubted by some, as not just, uppon common fame only to proceed to such a kind of condemnation; though in some cases it was sayd, "that the voice of the people is the voice of God," yett not alwayes^r.

With the Hebrewes, after one had undergone the punishment of the lawe for an offence, he was to be restored to his reputation. And in some cases it was lawfull to inflict punishment of stripes uppon common fame, and an ill reputation only^s.

So it was among the Athenians:

ⁿ Dyer. 236. 6 H. 7. Eliz.

^o 11 E. 4. 4.—7 E. 4. 20.—2 H. 7. 3. et

16.

^p Dr. Cofins, lib. super violatione sacramenti.

^q 28 H. 6.—

29 H. 6. Rot. parl. n. 16, 17.—12 Jac.

^r Vox populi vox Dei.

^s Helach Sanhedrim. c. xvii. §. 8.—De fynedr. lib. ii. Seld. p. 570.

The voice of people celebrates for good
Or bad repute, and so it firmly stood^s.

Fame with the antients had an altar, as a powerfull goddesse. And Boccalini holds, that one thing is unsatiably to be provided for, a prosperous memory of one's selfe, a good reputation^t. The faults of the gods (that is of great men) were not knowne (as one notes) before the birth of the goddesse Fame, who discovered them. And there is no judicatory in Christendome, where there is not some proceeding uppon fame and reputation. Matchiavell relates of the Florentines, that they instituted a judicatory to proceed by publique fame; the reason was, bicause none would be wittneses against the nobles. And those who live basely and wickedly, fame is to be the accuser and wittnes against them^u.

Surely a good reputation is a most desirable qualification for senators; and to be indeavoured by all men to be gained. The wise man was of this opinion; "A good name is rather to be chosen than great riches, and loving favour rather than silver and gold. And a good name is better than pretious ointment^w."

Gamaliel is commended by the holy word, for a man who was had in reputation among all the people; and that he was most fitt to be a senator, appears by that pious and wise counsell which he gave unto the assembly, who had not the grace to follow it^x.

^s Quem populi sermo celebrat creber, irrita nunquam.
insatiabiliter parandum, prosperam sui memoriam.

^t F. 443. Unum

^u Mach. hist. Fiorent.

lib. ii. f. 43. b. Fecefi che la publica fama bastasse a giudicare per quelle leggi, etc.—

Qui nefarie atque turpiter vivunt, etc.

^w Prov. xxii. 1.—Ecclef. vii. 1.

^x Acts v. 34.

Surely he that hath an ill name, no good reputation, is not fitt to be elected to that great trust of being a member of parlement: butt a good reputation is to be regarded in the election of persons to that high employment, and makes them the more qualified and fitt to receive that honor, and to undergoe that burden, to serve their countrey in their publique councells.

C H A P. LI

And discreet men.

UPPON this word, “and discreet men,” it may not be improper, for diversion and variety, a little to discusse that old question, whether women be qualifed to be in publique councells? By the custome of England women are not returned of juries, nor putt into offices or commissions, nor eligible to serve in parlement, or admitted to be members of the house of peeres; butt, by reason of their sexe, they are exempted from such imployments.

That they ought to be so is urged from severall texts: “Take wise men,” etc. “Thou shalt provide able men,” etc. “And Moses chose able men out of Israell, and made them heads over the people^a.” Butt no direction, or choise, is of women to be magistrates, or publique counsellors.

The apostle directs, “Lett the woman learne in silence with all subjection; butt I suffer not a woman to teach, nor to usurpe authority over the man, butt to be in silence^b.” And most of the versions beare it, “that she is not to usurpe authority over her husband or any other man.”

Some of the rabbins are of this opinion, that a woman ought not to be made a judge; that they are unfitt for it, and not to be

^a Deut. i. 13.—Exod. xviii. 1. 15.

^b 1 Tim. ii. 12, 13.

admitted to magistracy and counsellors, as being, by reason of their sexe, unfitt for such employments.

This was the custome of the old Graecians, and the law of the easterne empire. And St. Augustin notes, that the woman is subject to the dominion of her husband, and hath no authoritie; she can neither teach, nor give faith, nor judge, how much lesse governe^c. And this was a generall received custome: yett not that by divine right, or the law of nature, any such thing is commanded, that for want of understanding they are incapable of magistracy; butt for the priviledge of their sexe, and that they be not mingled with men in the agitation of affayres and suits.

The greeke poet reflects upon them, where he saith

Women to good are most unhandy sure!
But in all evill are artists very wise^d.

The philosopher holds that “the councill of women is weake, and of children imperfect;” ranking those two together^e.

By the roman lawes women were kept from being judges; not bicause they wanted judgement, or are to be taken as those disabled by nature, as deafe or dumbe or mad persons, or the like; butt bicause “it is a received opinion that they are not to exercise civill

^c Maimon. tract. Melakin-wenalchama, feu de regibus et bello, c. ix.—R. Gedaliah.—Ben. Jechai. in Shalseleth. f. 14. et al.—Aug. quæst. vet. test. 45. causa 33. q. 5. c. xv.—Panorm. lib. vii. c. 49.

^d Γυναικες εις μεν εδλ' αμηχανώταται

Κακῶν δὲ πάντων τέκτονες σοφώταται.

^e Arist. lib. i. Polit. Concilium mulieris est invalidum, pueri autem imperfectum.

offices^f." The like is also delivered by their great lawyer Ulpian, that "women are removed from all civill or publique offices;" and therefore can neither be judges, nor magistrates, nor deputies, or proctors for others^g. And Justinian willes, that they be separated "from all judiciall assemblies^h." And this was the law of the westerne empire, and of the cannons.

Some french men, who have written in defence of their salique law, and for the setting of it up to defeate the title of our king E. 3. to that crowne, have bin led by that argument to write against government by women: and more severe than others in this point is Bodin, who not only justifies the salique law, butt inveighs against the government by women as contrary to the law of nature, which hath given to men wisdom, courage, magnanimity and power of commaund; butt hath taken it away from womenⁱ.

I thinke an answer may be given to these objections: and first touching our owne countrey, our stories give sufficient testimony of the good opinion of our auncestors concerning women, and their esteem of them as fitly qualified for government, and counsell both smaller and greater, and often to the royall trust itselfe. And this is not the observation of a few dayes. To passe the agreement of the Scoti, when the wives were asked that, in case of failer of the male line, that the females should enjoy the crowne^k. Tacitus makes it a note in his time, that the Britains used to make

^f Paulus, lib. xii. cum Praetor. §. 2. D. tit. de Judiciis. Sed quia receptum est ut civilibus officiis non fungantur.

^g Ulpian. lib. ii. D. tit. de reg. Juris. Foeminae ab omnibus officiis civilibus, vel publicis, remotae sunt.

^h Lib. vi. c. de receptis arbitris. Ab omni judiciali agmine.

ⁱ Bodin. lib. vi. de Repub. c. v.

^k Bede.

warre under the conduct of women; and made no distinction of sexes as to government¹. Uppon this place it is affirmed, that the brittish women were not exempted from the warres; and many of that sexe were renowned for their valour, with them^m. Our german auncestors esteemed something holy and provident to be in womens councells, which they did not despise, nor neglect their aunswears; sometimes, through increase of superstition, accounting them as godsⁿ. Caesar confirmes it to be “the old custome of the Brittaines to advise with their women, in matters of peace and warre: and if any questions did arise with their companions, they were referred to the arbitration of the women^o.”

In that great controversy between the two brothers, Brennus and Belinus, by their mother's wise counsell and arbitration (to which they both submitted) a peace was made between them, and they lived as brothers together^p.

The story of queen Boadicea is notable: she was the widdow of Praesutagus, king of the Iceni, who, in hopes thereby to preserve his estate, had by will made Claudius and his owne two daughters his heirs; butt after his death, his queen was whipped, his daughters defloured, his wealth seized, and his people kept under miserable servitude by the insulting Romans. This (as a provoking cause) moved an insurrection, and Boadicea was chosen for their leader: who so well acquitted herselfe both in counsell and conduct, that under her, though a woman, fell 70000 Romans, and their

¹ In vit. Agric. et Annal. 4. Foeminarum ductu bellare, et sexum in imperiis non discernere.

^m Speed hist. Angl. p. 26.

ⁿ Jan. Anglor. p. 29.

^o De bell. Gall. Mos inolevit ut pacis et belli cum foeminis consilia inirent. Si quae quaestiones cum fociis inciderent, earum arbitrio has committerent.

^p Galfr.

Mon. hist. lib. iii.—Mat. Westm. aetas 5. p. 53, 54.

towne Verolam was sacked¹. And as in her prosperous successe, so in her adverse condition afterwards, the height of her spirit appeared; rather to choose death by poysoning herselfe, than to continue in slavery when she saw the Romans victors over her, and her people by the slaughter of 80000 of them in one battaile.

In the charters of the saxon kings, made in their parlements, we find abbeſſes often named as wittneſſes, and that among the biſhops and nobles: as in the charter of king Offa to the abbey of Croyland, is ſubſcribed “ I Ceolburgha, abbeſſe of Berdea, have aſſented²,” etc. The like is in the charter of king Edgar, to the ſame abbey, made in parlement: among the ſubſcriptions of the peeres is, “ I Merwenne, abbeſſe of Rumſey, have made the ſigne of the holy croſſe.” The like is by the ſame abbeſſe in parlement, and by the abbeſſe Wulwina, and ſeverall others³. And the ſame author informes us, that the charter of king Ethelwulphe was made, “ in the preſence, and with the ſubſcriptions of firſt the archbiſhops, after them of the kings of Mercia and Eaſt Angles, and an infinite multitude of abbotts, abbeſſes, dukes, earles, nobles and other faithfull people of the land.” And ſeverall of the like are in our ſtories. Malmesbury mentions a parlement held by king Edgar, in which Alfgina his mother was preſent⁴. And Cnute in his parlement is ſayd to have reſtored and placed monkes in a monaſtery, “ by the counsell of Emma the queen, and of the biſhops and barons of England.” The courage and magnanimity of Gunmild, ſiſter to king Swayn, is commended (who was married to a nobleman,

¹ Tacit. Annal. lib. 14.—Cambden. Brittan. p. 49, 50.
p. 854. Ego Ceolburga, abbatiffa de Berdea, aſpiravi, etc.
abbatiſſa de Rumſege, etc. Ingulphus, p. 882, 883.
p. 57, 58. ² Mat. Weſtm. p. 423. Conſilio Emmae reginae, et epiſcoporum
ſimul et baronum Angliae.

³ Ingulphus, hiſt.

⁴ Ego Merwenna,

⁵ Malm. lib. ii. c. 8.

and became a christian) when the bloody duke Eric (to whome she and her husband were in custody as hostages) caused her husband and son to be slaine before her face, and then herselfe to be beheaded whose wisdom and counsell had affected the peace; and all this she bare with undaunted courage and constancy ^w.

The faxon lady Egitha, queen to Edward the confessor, is said to have bin very learned, milde and modest, faithfull and honest, excellent qualifications for senators ^x.

Our queen Cartismandua deserves a place among the worthy women for counsell and government.

Of the faxon queen Sexburga, it is related, "that there was not wanting in her a spirit fitt to undergo the offices of a kingdome; and that she knew how to levy new armies, how to keep old ones in their duety. She could mildely governe her subjects, and by force tame her ennemies. She could doe all things so, that no difference butt of the sexe appeared in her actions ^y."

The daughter of W. 2. Maud the empressse, is sett forth to be a gallant woman, qualified for counsell and action. She conducted her son, afterwards king H. 2. and a great army from France into England; defeated king Stephen and his adherents; and by her wisdom, courage and counsell, invested her son in his right of the crown of England ^z.

^w Hen. Hunt. hist. lib. vi. p. 360.

^x Ingulphus, p. 895: Litteris apprimè

erudita, mitis et modesta, fidelis et honesta.

^y Malmesbury, lib. ii. de gest.

reg. c. 2. Spiritus ad obeunda regni munera, novos exercitus moliri, veteres tenere in officio, ipsa subjectos clementer moderari, hostibus minaciter infremere, prorsus omnia facere ut nihil praeter sexum decerneres.

^z Hist. eorum tempor.

The wife of our king E. 2. managed great affayrs ; butt her abilities are clowded by her infamous dealing with her king and husband. So were those of queen Mary stained with impiety, and the innocent blood of holy martyrs shed in her time.

The lady Margaret, countesse of Richmond, mother to our king H. 7. had great power and authority, and wanted not wisdom and abilities to support it. She (though a woman) was putt into commissions of the peace and publique offices.

In the actions and sufferings of Mary, soveraign queen of Scotland, appeared great abilities of wisdom, courage, learning, counsell, and immense patience : and had she mett with the like candor, faithfullnes, humanity, cleernes and royall confidence, as lodged in her own breast, her story had not bin writ in blood ; as it was to the shame of those that shed it, butt to her owne immortal glory.

All the historians agree, that our queen Elizabeth was not outgone by any of her predecessors, in policy, wisdom, constancy and good success ; and that she governed with such prudence and good counsell, that she became obeyed att home and feared abroad ; and procured much increase of trade, peace, and (which is above all) light of the gospell to her owne people, and to her neighbours^a.

Butt I must hasten to our great exemplar, the holy story : where we reade of the wisdom and policy of Rebecca ; of the prophetesse

^a Cambden, Speed, Hollinshed, Martin, Daniel, Baker, etc.

Deborah who went to the warre with Baruch, and the children of Israel came up to her for judgement ^b.

It is recorded of Abigail, that she was a woman of good understanding; and she shewed it in preventing the daunger and evill which her husband's folly had like to have brought uppon them, and their family ^c.

The carriage of the buisnes commended by Joab, unto the woman of Tekoah, was very prudent and succefffull ^d.

The wise woman, who had great authority in the citty of Abel of Beth-Maachah, gave good counsell to Joab, the generall of the king's army, who hearkened therunto, and so did the cittizens; and therby saved a citty, and a mother in Israel ^e.

The queen of Sheba was doubtles a very wise woman, who came to prove king Solomon with hard questions, and gave so good a judgement of him ^f.

Huldah was a prophetesse, of whose wisdom and counsell the Israelites had so great an opinion, that king Josiah sent unto her to inquire of God, and to consulte with her about the estate of the nation ^g.

Queen Esther adventured with much courage, and carryed her buisnes with great wisdom for the preservation of her nation ^h.

^b Gen. Jud. iv. 4, 5.

^c 1 Sam. xxv. 3.

^d 2 Sam. xiv. 2, etc.

^e 2 Sam. xx. 16, 17, 18, etc.

^f 1 Kings x. 1, etc.

^g 2 Kings xxii.

14.

^h Esther vii. 1.

The wife of Pilate gave her husband good counsell. Butt wisest of all was Mary, who chose that good part which shall not be taken awayⁱ.

The wise man asserts, that a virtuous woman is a crowne to her husband. And the son of Syrach adviseth, "Forgoe not a wise and good woman, for her grace is above gold^k."

The Graecians rejected not the counsell and government of women. The emperor Heliogabalus had so great an esteeme of womens fittnes, and being qualified for publique counsell and government, that he instituted that assembly of matrons which they called the senate of women. And mention is made in severall authors, and counsell, of senators of both sexes, senatrices, presbiters, and presidents of womens counsell, and many the like termes and expressions testifying, that there were publique counsell of women; butt the word presbitereffes is not mett with among them^l.

Theodosia, after the death of her husband and brother, was emperesse; and in that place was feared and obeyed, and that without the helpe of father, husband, or brother. She is sayd to governe the empire most nobly, in peace and prosperity, and her death was grieve to all her subjects^m,

We reade of a woman whose learning and witt was so great, that she gott into the pope's chayre, and two years together mainteyned

ⁱ Mat. xxix. 7.—Lu. x. 42.

^k Prov. xii. 4.—Ecclesiast. vii. 19.

^l Lampridius in Heliogab.—Vopiscus in Aureliano. Conventus matronalis. Senatus mulierum.—August. de morib. eccles. c. ult. et in vit. Desider. p. 52. ^m Synod.

Lodicaea, can. xi. — Epiphan. haeret. 39. Senatores utriusque sexus, senatrices, presbiterae, πρεσβυτίδες, προκαθημέναι. Presidentes sed non presbiteressae.

ⁿ Platina.—Martinus Sabellicus.

her estate and credit, till her being delivered of a child gave testimony of her faith and sexe, and caution to the gulled praelats for future elections.

The Amazons were most warlike and wise women, as the historians report them; and without the counsell of any men they vanquished great armies, subdued large countries, provinces and citties". The account of them, and generally of women, by Pedro Mexia in his chapter of Amazons, is very full; and that they have gone beyond men in all kind of virtues. Another holds, "that in extreame necessity and suddein daunger, they doe find out remedy and counsell, and are very good in apprehending suddein and unexpected counsells°." And the poet, who was a lover of women, in their prayse sayth:

"The name of women doth all honor merit,
And by it is imply'd a virtuous spirit".

As to the roman lawes, they sometimes admitted women to counsell and government; and sometimes they did not; as the occasion did require. And the patrimoniall offices women were admitted to injoy by inheritance, to which the power of judging appertained and was exercised by women; and it is evident that they (as well as men) were admitted to publique judgements and consultations by the antient Greekes, Romans, Germans, Britains, Gaules and others, the examples wherof would be too many to be heere recited¹. And frequently women were received to the royall dignity

¹ Diodorus Siculus, Pomponius Mela, Propertius, Claudian, etc. [°] In extrema necessitate et periculo subito inveniunt remedium et consilium, et subitis consiliis excogitandis valent plurimum. ^p Ovid. de arte Amandi. i. Ipsa quoque et cultu est et nomine foemina virtus. ¹ L. unic. c. de mul. Taraquell. ad leg. ii. Connubial. glosse i. p^t ii. Azevedo. ad recopilat. 3. tit. 9. §. 20, etc.

itselfe in Germany, England, Sweden, Denmarke, Scotland and other countries.

Queen Christina of Sweden was of rare abilities for publique matters: she discoursed perfectly in the French, High Dutch and Italian languages; in treaties would, on the occasion, write her objections and answers in good Latine; understood the Greeke, Spanish and other languages, and generally most points of learning, and the affayres and interest of most princes and states of Christendome. Her orations to her publique councill, and to forrein ministers, were with such grace, majesty and prudence as could hardly be expected from a young lady: and her management of state affayres such as caused her own subjects and straungers to acknowledge her abilities for government, and to wonder att her abdication.

Bodin, in his declamation against women and their government, is not pleased to remember, that in Fraunce, when their kings were minors, they permitted women to be regents; as Blaunch to have the tuition of Lewis, Isabel governed under Charles the 6. and Katherine de Medicis in the minority of her son: nor that which his countriman remembers, "that the women are capable to hold peerages, have their opinion in judgements, and ought to be adjourned and called thither as other peers, bicause they hold dignities which have the exercise of justice". And there he mentions the countesse of Flanders, in the judgement for the county of Clermont; and Mahault countesse of Arthois, as a peere, was party to the severall judgements against the earle of Artois. The dutches of Orleans and the countesse of Artois were adjourned to be att the judgement of John of Montfort, and of the king of Navarre.

^r Du Haillan, lib. viii. f. 232. Les femmes sont capables de tenir pairries, ont opinion en jugemens, et y doiuent adjournees et appellees comme les autres pairs, pour ce que elles prennent dignitez ayans exercise de justice.

In the Jani Anglorum it is said, that Bodin's arguments will not be strengthened by the counsell and conduct of Deborah, nor by the examples of the queen of Sheba, of the italian Amalafintha Atemisia, nor of the aegyptian wise women, nor of the assyrian Semiramis, Tomiris, Zenobia, and infinite others*. Nor could Bodin have espied those defects, which he makes generall in that sexe, in Boadicea, Cartismandua, Sexburga and others, in whom those virtues and abilities eminently shined forth, which he affirms to be wanting in all of that sexe. The Cecropii, Minerva, Agenora, Penelope deserve to be reckoned up. With the gods Jupiter, Neptune and Pluto, the goddesses Juno, Salacia and Proserpina did reign in heaven, on the sea, and on the earth.

The conclusion of our author, concerning women, will not offend them if I borrow it, and communicate it to them in their mother tounge, which speakes to this effect.

Who would not affect women? It seemes to me a wickednes to so great a comfort of human kind, to so sweet an alleviation of the sharpest labours and changes of life, to so deare a giift of the most supream nature, not to give a due regard and honor.

* Seld. Jan. Anglor. p. 29.

CHAP.

C H A P. LII

Of the said countey.

THE latine word in the writ for "countey," comitatus, is derived à comite, countey from the count or earle, as dutchy from the duke. Others would have it comitatus à comminando, bicause from that court of the countey punishment is threatned to malefactors. The court of the emperor and of kings was antiently called comitatum, and their servants comites, which title was afterwards transferred to principall officers, who being sent to the government of citties and provinces, their praecincts were called counties^a.

Coke derives comitatus à comitando, bicause the men of a countey accompany together in their courts of justice and publique affayres^b. Lambart sayes, "that what we now call a countey, antiently with the Brittaines, in the time of the Romans in the kingdome of Brittain, was called consulatus^c." And antiently a countey was so much land as the earle is commander of^d.

The Saxons called a countey by the name of shire or schire; and shires were portions of land conteining so many townships: and scyran, in the faxon tounge, signifies to divide, bicause every countey or shire is divided and parted, by certain metes and bounds, from another^e. A countey hath also the name of bailiwick, as in many of

^a Otto Frisingensis.—Spelman. glossar. hoc verbo.

^b Co. on Litt. p. 50.

^c Quod modo vocatur comitatus, olim apud Britones temporibus Romanorum in regno isto Britanniae vocabatur consulatus.

^d Jannens, Canonist.

^e Co. on

Litt. f. 50.

our writs, and the returnes therof, the sherife is commaunded to doe such a thing within his bailiwicke, that is, in his shire; and he returnes, "such a one is not found within my bailiwicke^f;" and the like. And a shire, or countey, and bailiwick is all one.

The Hebrewes called that portion of land which was assigned to each tribe by the name of that tribe; as the land of Judah, the countrey of Zebulon, of Ephraim and Manasse, the land of Naphtali, and many the like^g.

So we reade of the land of Goshen, a praecinct or territory in Aegypt called by that name^h. The Romans used generally the name of provinces for their distinguished territories; and all countreyes, in their severall languages, give names to the circles and portions of land as they have divided them.

^f Non est inventus in balliva mea. ^g Mat. ii. 6.—Jud. xii. 12.—2 Chron. xiii. 10.—1 Ki. xv. 20. ^h Gen. xlv. 18, etc.

C H A P. LIII

And of every cittie.

CITTIES are the objects of lawes and government, where persons are mett together to live and trade in civill societies, from whence some derive the name of citty^a.

Patricius Senensis saith, that when children and nephewes increased, it was necessary to add houses, and so to constitute societies of many houses; and when people became sensible of the benefit of humane society, and how much more easy it was for many than for few to provide food and live safely together, they conjoined families to families, and fortifications were invented^b; and so citties were rayfed, that people might live plentifully and safely together, and the more free from force and violence: so that he calles a citty a “collected multitude of men, to live well and rightfully together.”^c Butt heerof somewhat hath bin noted before.

By the comment uppon Littleton we are told, that a citty is a burrough incorporate, which hath or had a bishop; and though the bishoprick be dissolved yett the cittie remaines^d. King W. 1. ordeines, that no fayre or markett be kept butt in citties, and burroughs inclosed with walles castles and fortifications; and sayes, that therfore they are built and founded, “for the defence of the nations and

^a Civitas quasi civilis societas.
hominum multitudinem ad jure vivendum.

^b Lib. i. tit. 3. p. 18.

^c Collectam

^d Co. on Litt. p. 109.

people of the kingdome, and for the safety of the kingdome^e." Our author cites a record, that Cambridge was a cittie^f; and of Westminster it is noted before. All other of our citties are bishops sees, and are countyes of themselves, except Cambridge, Ely and Westminster.

In Domeſday it is ſaid, that in the citty of Yorke, in the confeſſor's time, there were 7 ſhires. So that a citty may conteine ſeverall counties, though ſmalle ones.

The Hebrewes called the principall of their towns citties, as the citty of Samaria, the citty of Jeruſalem, the citties of Refuge, and the more eminent towns in all countries, were called citties, the perticulars wherof are ſufficiently knowne to all, and require none of our time to mention them. St. Auguſtin hath written 22 excellent bookes of the citty of God, and fetcheth the originall of citties from Cain and Abel, who were the founders of the two cittyes which comprehend the whole world. The firſt was founded by Cain, whoſe name ſignifies poſſeſſion, and is the citty of the divell, including the wicked of this world who have their poſſeſſion and inheritance in this life; who labour to gaine worldly things, and place their delight and joy in the poſſeſſing and injoying of them, and their miſery in the loſſe of them. Moſes ſayes, that Cain was the firſt that built a citty: ſo thoſe who belong to the citty of the divell, in the firſt place, ſeeke for themſelves a ſeate, and quiet and felicity on earth.

The other citty was built by Abel, and is the citty of God: his name ſignifies mourning and vanity; his cittizens, the people of God, uſe to mourne for their own ſins and for the ſins of others,

* Ad tuitionem gentium et populorum regni.

^f Mich. 7. E. 1. rot. 1.

and doe account the things of this world butt vaine and transitory. The father saith, these two citties made two loves; the one was earthly, the love of themselves, to the contempt of God; the other was heavenly, the love of God to the contempt of themselves^e.

'Tis worth our meditation, what is become of the citty of Enoch, of Babel, of Sparta, of Athens, of Jerusalem herselfe which was the prayse of the whole earth. Are not these and many other famous seats and citties become heapes uppon heapes! and shall not the present flourishing citties become in time also heapes uppon heapes? Will not their sins hasten on their rubbish? The apostle truely telles us, we have heere no abiding citty^h. Empires, kingdomes, citties and families, as well as persons, have their fates and periods. Sett not therefore, whosoever thou art, thy affection uppon these earthly cittyes, be none of Cain's citzizens, butt gett thy name inrolled as a citizen of the citty of Abell, of the new Jerusalem; gett one of those many mansions in thy father's house, a tabernacle not made with hands, an heavenly inheritance, a portion with Christ, a treasure and abiding place which will indure unto eternityⁱ.

^e Pererius commentar. in Gen. iii. 24. p. 231, 232.—St. August. lib. xiv. de civitate Dei, c. ult. ^h Heb. xiii. 14. ⁱ Jo. xiv. 2.—Heb. ix. 11.

Of that countrey.

IT hath bin noted, that a citty may conteine severall counties; butt generally a countey containeth severall citties, that is, severall citties may be within the compasse and bounds of a countey, as London and Westminster are in Middlesexe, though London be a countey of itselfe as most other citties are. Some counties have no citty in them, as Buckinghamshire, Berkshire, Bedford, Huntingdon, Salop, and other counties; it is as it falleth out in the scituation of them. Ingulphus writes, that king Alfred, “first of all, altered the countryes and provinces of all England into counties^a;” butt (saith Sir Roger Owen) you must understand Ingulphus meaning to be, that the heptarchy being determined, king Alfred did more perfectly or absolutely reduce these countryes^b: butt that they were more antient than his time appears by many records cited by this author in that chapter, and by the comment uppon Littleton^c where he cites the lawes of Edward the confessor and, among other notes uppon them, sayes, that this realme was divided into shires and counties, and those shires into citties, burroughs and townes by the Brittaines; so that (saith he) king Alfred’s division of shires and counties was butt a renovation or more exact description of the same.

^a P. 870. Totius Angliae pagos et provincias in comitatus primus omnium commutavit.

^b MS. c. p^t 2. p. 339.

^c Co. on Litt. p. 168.

A countey being so much land as an earle was formerly commander of; thence it was that counties are not equally divided. And some partes therof, as members cutt off from their bodyes, lye remote: bicause shires were first levelled out not by line, or measure of land from land; but, by the resorte of certaine people to a peculiar court, or countey, where justice was administred. Butt shires being more equally † divided: some noblemen or gentlemen having smalle parcells, or mannours, in one countey adjoyning to another; [such parcels or mannours] by usurpation, (or sufferance of resorting of the inhabitants or dwellers therof, being their tenants, unto the courts of the countey where the nobleman dwelt,) came to be accounted parcell of the countey where the nobleman or gentleman did dwell.

The king may, by his charter, erect a citty into a countey^d; and judge Jones affirmed, that it was the resolution of all the judges of England and Ireland, that the king by patent only may take from one countey, and adde to another; and so he doth whensoever he makes any citty a countey.

Some doe hold, that the distinctions of counties was made by the Berengarii: others under Otho, or Charles the great; which may be true of many of them, yett some are more antient: and generally, where there was an officer called a comes, the territory or præcinct under his government was called a countey^{dd}.

In

† The adverb *equally*, as used by the author here, seems to have no respect to the quantity or proportion of acres; but to the *regular* distinction of boundaries, and contiguity of parts: as the term *εὐθεία* in greek, *recta linea* in latin, and right line in english, is defined to be that which lieth *equally* between its points, or extremities. (M)

^d Lib. Intrat. f. 129. ^{dd} There is a small inaccuracy in the former part of this period; which may be corrected by the following quotation. "Comitatus (ut scribit

In the kingdome of Hungary, the severall provinces are called counties: and Frisingensis sayes, “that this kingdom was divided into threescore and ten counties, or more;” and each of these had their comites, and vice comites, for matters of government^e.

In Sweden are “severall provinces divided into dutchies and counties, and they calle them territories^f ;” which the author defines to be a tract, space or dominion of land, or a society of villages, townes, or countries, armed and distinguished by peculiar jurisdiction; and the word comitatus, countey, is frequent with them for those territories.

France hath the like division into counties, and that very antient; it being often found in the lawes of Charlemagne, “what diligence the counts ought to use, in their counties, that justice be administred to every one^g.” There are, in that kingdome, many counties knowne by the name of counties: and in most nations and kingdomes of Europe, the like division of their territories into counties, and the retaining of the word “comitatus” for those territories and divisions of countries, is sufficiently knowne.

Andr. Alciat. leg. Pupillus 239, § territorium. ff. de verb. sign.) proprie de imperatoriâ aulâ dicitur. Sed quia tempore Caroli magni, regnantibusque Berengariis et Otthonibus, ad singulas civitates regendas aliquis comes mittebatur; coepit jurisdictio, territorium et districtus (quoniam illi comes praeerat,) comitatus dici.” Calvin. Lexic. Jurid. ad verbum Comitatus. (M)

^e De gest. Fred. i. lib. i. c. 31. Per 70, vel amplius, divisum fit comitatus.

^f Mich. O. Wexionius, descript. Suev. lib. i. c. 3. Dividuntur singulae provinciae, sint ducatus sint comitatus, in sua dominia seu territoria.—

The construction of this passage is evidently as follows: viz. “Each of the provinces, whether they be dutchies or counties, are divided into their lordships or territories.”—

But I have not ventured to introduce the alteration into the text, as I have not the opportunity of consulting Wexionius: and either way, the use of the word “county,” in Sweden, will be sufficiently established. (M)

^g Pasquier Recherches. p. 110. La diligence que les comtes doivent faire en leurs comtez, à rendre droit à chacun.

C H A P. LV

Two cittizens.

ACITTIZEN is a fellow and inhabitant of a cittie. Patricius Senensis describes a cittizen to be a native of the place, borne of ingenuous parents, or one who is made a free cittizen by the magistrates or lawes^a.

The distinction of Aristotle, of a cittizen analogically so called, and a cittizen so called simply, is true. Butt not to take up much of our time, straungers, servants, old decrepite men and children are of the first sorte; for these injoy the law and light of the citty, as well as other cittizens^b: butt bicause straungers and servants, of themselves, are not to pertake of civill affayres, and decrepit men are exempt from publique offices and affayres, and children are not capable of them for the defect of age; therefore they are not absolutely and simply, butt analogically to be named cittizens^c. Butt a cittizen simply is defined by no other thing more than by participation of civill power in counsell, judgement and magistracy; and is thus defined: "A cittizen is part of a citty, either gotten by nature or approved by publique authority, capable of counsell, judgement and magistracy, by act or power^d."

^a P. 22. b. Civem indigenam loci, ingenuis parentibus oriundum; vel eum qui à magistratibus, vel legibus, civitate donatus sit.

^b Hii lege et luce civitatis non

aliter quam cives utuntur.

^c Casi sphaera civitat. p. 196.

^d Est civis

pars civitatis vel à natura parta, vel publica auctoritate approbata, consilii, judicii, et magistratus actu aut potestate compos.

This description of a cittizen fitts all of that condition both in England, and elsewhere: and cittizens are necessary members of publique councells, especially in England where trade is of so much consequence, wherof cittizens have more knowledge and experience than others.

Of the resiancy of cittisens, to be chosen as deputies to serve in parlement, our lawe is very carefull; and therefore it was enacted, that the cittizens of the citties be chosen men, cittizens resiant, abiding and free in the same citties, and none other in any wise: though of later times this hath been connived att, in most of the elections in citties.

The number of two cittizens for every cittie is generall; except in the metropolis, London, where they elect four of their cittizens to serve as their deputies in our parlements.

* 1 H. 5. c. 1.

C H A P. LVI

And of every burrough.

THE latin word of the writ in this place is burgus, which, with the English of it burrough, is derived by antiquaries from the faxon words burg, burȝ, buph, etc.^a which we call borough, bery and bury. Some doe bring the word burgus from the greeke word which signifies a tower^b; and shew that burgus is sometimes taken for a mountaine, a castle, a towne, and a cittie promiscuously. And the Saxons called those boroughs, which others called townes and citties. Hence the Burgundians had their name, as being dwellers in burghs or fenced places.

Tacitus relates of the Germans^c, and so it was with our faxon auncestors, that they used not to putt their dead bodies into graves; butt lying on the ground, they covered them over with turves or cloddes of earth, and the more reputation the person had, the greater and the higher were the heaps of earth rayfed over their bodyes: this they called biriging, and some beorging and buriging; and we from thence say burying^d, that is, hiding of the dead. These birghs or beorghs, seeming as hills (wherof there are many evidences in divers parts of England, and in Germany and the northerne countries) the name birigh, beorgh, and bergh became the generall name of a mountaine; and bicause it signified to shroud or hide,

^a Spelman. glossar. verbo Burgus, bunch, berȝ, beorȝ, birȝ.

^b Hugos.

^c De moribus Germanor.

^d Verstegan, p. 212.

therefore the places where conies used to hide themselves were called conyberries and conyburroughs: and the northerne people using to fortify themselves with huge heaps and walles of earth and turfe cast up about their campe, to shroud and defend themselves, this they called a burgh^e; and thence with us, and in other countries, forts or castles and walled townes are called boroughs.

Butt we are instructed uppon Littleton, that a burgh is so called, bicause it sendeth burgessees to parlement^f: rather burgessees are so called bicause they are the deputies of burghs. He saith, that of burghs some be incorporate, and some not; and some be walled, and some not: that it was in former times taken for those companies of ten families which were one another's pledge; and therefore a pledge in the faxon tounge is borhoe, wherof (some take it) that a burgh came; and from thence also headborough, borrowhead, the chiefe pledge or chiefe man of the borough whom Bracton calles frithborgus, and burghbote, an exemption from payments for reparation of the walles of citties and boroughs. That every citty is a borough, butt every burgh is not a citty, nor doth send burgessees to parlement.

Cowell describes a burgh to be a towne inferior to a citty, which by the king's charter is made a body politique, and exerciseth jurisdiction within its limits^g: butt some (which he forgetts) are by praescription, as boroughs in antient demesne, and others, which praescribe also for their jurisdiction.

Burgh and bury have all one signification, as Canterbury, Bury St. Edmond, Salisbury, Malmesbury, Teuksbury, etc. which send burgessees to parlement.

^e Procop. de bell. Gothic. lib. ii.

^f Comment. Co. on Litt. p. 108. b.

^g Institutiones, lib. ii. tit. 3. §. 27. et tab.

An historian relates of Medehamsted, that after the abbot Kenulphe had compassed it with a walle, from the likenes to a citty it was called Burch^b. Spelman sayes, that when by the ecclesiasticall canon it was prohibited, that bishops sees should not be butt in citties, that title remained to cathedrall boroughs only; yett the rest retained the show of citties, having generally a head officer and jurisdiction, and their suffrage in parlement by their deputies: and though they become decayed yett they lose not this priviledge, wittness old Sarum, where two houses and a conyborough choose two burgessees.

In Germany they have many townes which have this priviledge of sending deputies to their diett; as Hambourgh, Norimbergh, Magdeburgh, etc. So in Gothland, Gottenbergh; in other provinces, Wiburgh, Arburgh, Ulaburgh, Wanersborgh, Biornborgh, etc. And in Fraunce and Spayn they sometimes call a notable town, walled and fortifyed or not, by the name of burgh.

^b Malmesbury de gest. Pontific. lib. iv.

C H A P. LVII

Two burgesſes.

BURGESSES are the inhabitants and freemen of boroughs. Livy and Saluſt calles them caſtellani ; the ſaxon burghwarn^a. Theſe, exerciſing trades and mechanic artes, were deſpiſed by the nobles ; and the ſtatute of Merton holds it a diſparagement for lords to marry their wardes to burgeſſes^b. Yett I find the wiſdome of our law admitts them as ſharers in the ſupreame acts of government, and to the higheſt truſt, to be members of our parlements. The like was done by the Ægyptians and other nations : and the holy text mentions artificers with great honor ; as of Bezalel, “ I have filled him with the ſpirit of God, in wiſdome and in underſtanding and in knowledge, and in all manner of workmanſhip^c.”

Surely burgeſſes and artificers are maine pillars of a commonwealth, for the ſupply and enriching of it. The inventers of arts had the honorable name of fathers : and how meane ſoever burgeſſes and artificers may be eſteemed in theſe partes and ages of the world, yett antiquity and other countries had a great regard of them, as neceſſary and profitable to a commonwealth, to the good wherof every burgeſſe and artificer is an addition ; and in his trade or arte there is more of ingenuity or publique advantage, than in the greateſt gameſter, gallant, or debauched drones, who are only “ borne to conſume food^d ;” when the honeſt trade, labour, and induſtry of

^a Burghpann.^b C. vii. an^o 1235.^c Exod. xxxi. 3.^d Fruges conſumere nati.

the burgeſſe or artificer is an helpe to all, and from all deſerveth countenance and encouragement.

The degrees amongſt us are reckoned to be count, baron, bannaret, chivalier de countee, cittizen de citee, and burgeis de burgh^e.

The king may by his charter make any towne a burgh, and grant them the priviledge of ſending burgeſſes to parlement, and the election of them to be by a ſpeciall number of the inhabitants, as principall burgeſſes, aldermen, and the like; butt where the election is by praefcription, it is generally popular: and theſe graunts may be uſefull to the crowne, being made to thoſe places which have dependance on it, and are well affected to it. Such were the graunts to the two univerſities, reſtraining the election to certaine perſons of thoſe bodyes, and not allowing all the ſchollars voices in thoſe elections. Queen Mary graunted the priviledge to Abingdon of ſending one burgeſſe to parlement, and king James graunted the like priviledge to Banbury for one burgeſſe; and the like hath been graunted by charter to divers other townes and places, of ſending two burgeſſes to parlement: and doubtles the king may graunt to as many places as he pleaſeth the priviledge of chooſing by ſuch perſons as he ſhall appoint, and ſending of one or two burgeſſes to the parlement, and may make good uſe of ſuch graunts. And the houſe of commons are not diſpleaſed with ſuch graunts, by which the number of their members is increaſed, eſteeming that to be for the advantage of the commons; that the more representatives they have in parlement, the more intereſt they have in government. They were called in London burghwaers or burgers, in the time of W. I. as appears by his charter beginning thus plainly and ſhortly: “ William

^e 5 R. 2. c. iv. Stat. poſter,

the king greets William the biſhop, and Godfrey the portreeve, and all the burgers in London, etc^f."

The word was uſuall in the time of the Saxons, and ſince conſtantly uſed for ſuch as are deputies for the boroughs in parlement; and in the ſame ſence it is uſed in Germany, for the deputies of the imperiall townes which have ſuffrage in their dietts and publique counCELLS. In like manner in Sweden, thoſe who are choſen and ſent as the deputies of towns to their rickſdah, are called burgers and deputies of the burghs: and the like was in the aſſembly of the eſtates in France.

By the ſame ſtatute of our king H. 5^s. thoſe burgeſſes who ſhall be elected to ſerve in parlement ought to be reſiant, abiding and free in the boroughs where they are choſen; which cauſeth gentlemen to take the freedome of thoſe boroughs, and ſo it is connived att.

^f Williem king gnetr Williem birceop, ⁊ Godfrey portreevan, ⁊ ealle ða burghparr binnan London. § 1 H. 5. c. i.

C H A P. LVIII

Of the Discreeter,

A DISCREET man (by Scaliger) signifies a moderate man, one severed from the vulgar by the judgement of wise men; he that discerneth the qualities of men and value of things.

Discretion is said to pertain to wisdom^a; and with us, and in most other expressions, a discreet man and a wise man is all one.

The story of Brute's coming to this island is grounded upon the wise counsell of Mempricius, one of his senators^b. And all successful actions are grounded upon discreet and wise counsellors.

In our antient publique counsellors among the Britains, in the time of the Romans, the chiefe men and counsellors were called senators, who afterwards in the time of the Saxons (saith our author) were called aldermen, as it were elders; not because of old age, for some of them were young men, butt because of their wisdom^c.

^a B. Tho. 3. Sent. dist. 33. 9. 2.

^b Galfr. Monumeth.

^c Lib. de

antiqu. Brittan. legibus, c. vi. f. 95. Senatores quasi seniores, non propter senectutem, cum quidam adolescentes essent, sed propter sapientiam.

Our saxon auncestors putt such a value uppon this qualification of counsellors, by wisdome and discretion, that they called the publique counsellors themselves “the assembly of wise men,” “the meeting of all the wise men,” “the company of all the wise.” And such surely our parlements ought to be. King Ina beginnes his lawes: “I Ina king, etc. by the persuation of my father, my bishops, etc. and of all my senators and elders, wise men of my people, doe ordaine^d, etc.

In king Edwin’s time (as venerable Bede relates) the king would not receive the gospell, till he had consulted with his friends, his nobilitie, and his wise men^e.

The league between king Alured and Guthrune is said to be made by the counsell of the wise men of England. And king Alfred is said “to make use of the counsell of his wise men,” wherby to gather and putt in writing certain ordinances made by wise men in sundry synods of former kings, which collection of ordinances, he saith, he showed to all his wise men^f. After Alfred or Alured, Edward called his wise men to Excester, to consult with them, for the better observation of the peace of his realme. And in his time the league with Guthrune, the Dane, was confirmed by the wise men^g.

King Æthelstan concludes his parlement att Grateley: “These things were decreed and acted att Gratanley, where was present,

^d Co. ep. ix. r. et 8 r. f. 123. Writena gemote. Ealra pitten gemote. Ealra pyre.—Lamb. courts, f. 239.—Seld. Jani, f. 124.—Leg. Saxon. Inae Rs. 7 sam yl-æyrtan pitan minne ðeode.

^e Hist. eccles.

^f Leg. Alured. 7 ealley

Angelcynner pitan. Asser Menevensis. Prudentissimorum è nostris consilio usus sum.

^g Leg. Saxon. Edovardi. 7 ða pitan.

the archbishop, and the chiefe men, and wise men of king Æthelstan, called together." And this king calles another assembly of his wise men to Excester^h.

King Edmond calles his synode summoned to London, his meeting of wise men: and the same expression is used in the lawes of king Edgarⁱ.

King Ethelred beginnes his lawes: "This is the councell that Ethelred king, and his wise councell," etc. So the league, which he tooke with Anlaf is intituled to be made by him, and all his wise men: and other lawes of the same king, they being intituled, "The advice of our lord and his wise men"^k.

The statute of the mountaineers of Wales begins, "This is the act or decree, which the english wise men and the mountaineers, counsellors of Wales, made," etc. And this title of the king and his wise men very often occurs in the parlements of this king, and of king Edmond, and the rest of our saxon kings, almost in all their lawes wherof any memory is transmitted to us^l.

The danish king Cnute intitles his statutes: "These are the statutes of Cnute, king of the English, Danes, Norwegians, in his venerable councell of wise men." And that title the

^h Leg. Saxon. Æthelstan. 7 piozan be Æðelstan.—Lamb. Archeion. p. 255.

ⁱ Leg. Saxon. Edmundi. Mib minna pizena geðeahze.—Leg. Edgar.

^k Leg.

Ethelred. Ðis is ða genæbnyrre ðe Æðelred 7 his pizan.—Lamb. Arch. p. 255.—An^o 1008.

^l Senatus consultum de monticulis Walliae.—Angelcýnner pizan.—Ep. 9 rep. Co.

latine authors give to those parlements; of which manner of appellation of parlements, "the meeting of wise men," many more instances (if not too many already) doe occurre. If credit may be given to the manuscript of *Modus tenendi parliamentum*, he described the manner of holding parlements in the time of Edward the confessor, and of W. 1. "By the discreeter men of the kingdome^m;" the very word used in this writ. In the 4 year of W. 1. he caused to be summoned through all the counties of England "the English nobles, wise men, and learned in the lawes."

King H. 1. is said to send his writs over all England for his bishops, abbots, and theines to come to his wittena gemote, his assembly of wise men (so it was then also called) to be held at Gloucesterⁿ.

The statute of Marlebridge sayes it was provided by the king, the more discreet men of the realme being called together. The like is in the praeamble of the statute 52 H. 3.^o

The statute of Gloucester sayes, "the king calling the most discreet men of his realme," etc. The like expressions are divers times found in E. 1. time, and in E. 3. time, and constantly downwards to our present time: this word "of the discreeter men" being found in many of our printed statutes, and in the writs of summons to this day^p.

^m Per discretiores regni.—Leg. Edovardi regis. Anglos nobiles, sapientes, et sua lege peritos.

ⁿ Lamb. Archeion. p. 263.

^o 25 H. 3.—52 H. 3. St. prae-

amb. ^p 6 E. 1. Appelles les plus discrettes de son royaume, etc.—20 E. 1. stat.

praeamb.—30 E. 1. stat. Quo warrant.—15 E. 3. stat. 2.—20 E. 3. praeamb.

This is answerable to the custome of the Hebrewes in the choice of their counsellors: their doctors say, that men who were masters of wisdom, masters of power, who knew rightly to use the power committed to them, wise and skilful in judging were to be admitted of the jewish sanhedrim. And that they sent into every city of the holy land; and whom they found to be a wise man, him they placed in the lesser sanhedrim, and from thence preferred him to be a member of the great sanhedrim. The doctors agree, that none were admitted into the sanhedrim butt wise men. And those authors, which write of the sanhedrim, doe frequently stile the members therof by the name of wise men, and that from the rabbins and hebrew authors¹.

The commendation of wisdom is deservedly high in the holy text: the wise man sayeth of it, "Wisdom is better than rubies, and all things that may be desired are not to be compared to it." Job inquires, "Where shall wisdom be found, and where is the place of understanding?" Then, after a most elegant commendation of wisdom, "The gold and the cristall cannot equall it, and the exchange of it shall not be for jewells of fine gold; no mention shall be made of corall, or of pearles, for the price of wisdom is above rubies:" he concludes, "Behold the feare of the Lord, that is wisdom, and to depart from evill is understanding." Carnall wisdom may teach us vain policyes and subtleties, to gett wealth, honor or preferment. Butt what becomes of these in the

¹ Gemar. et gloss. Talmud. tit. Sanhedr. c. i. f. 17. 1.—Gemar. Hierosolim. ad tit. Sanhedr. et Seld. de Synedr. lib. ii. p. 261.—Maimon. Hatach. sanhedr. c. ii. §. 1. Schiccardus, Menochius, Bertramus, Sigonius, Seldenus—Sapientes. ^r Psal. cxi. 10.—Pro. ix. 10. and i. 7.—Pro. viii. 11.—Job xxviii. 12.—Pro. xxviii. 15, 16, 17, 18, 19.

day of languishing, and of eternity? Will they then afford us any helpe? It is sanctified wisdom which comes from the Lord; that is the only true wisdom, which will stand us in stead heerafter. The psalmist saies, "Thou through thy commaundements hast made me wiser than mine ennemies;" and he gives the reason, "for they are ever with me^a." The way to be wiser than our ennemies is to have the commaundements of God ever with us. "I have more understanding than my teachers, for thy testimonies are my meditation. I understand more than the antients, bicause I keepe thy praecepts^b." True wisdom comes from God only: and therefore counsellors, and all that desire it much, seeke to God by prayer, to attaine that rich jewell. It consists in having the commaundements of God ever with us, in making his testimonies our meditation, and in keeping his praecepts. Doe these things, and have wisdom; without this all other wisdom is folly.

A great example heerof was in king Solomon, to whom God saith, "Aske what I shall give thee:" he prayes to God, "Give thy servant an understanding heart, to judge thy people, that I may discerne between good and bad;" which is properly discretion. This prayer pleased the Lord, who said unto him, "Bicause thou hast not asked the life of thine ennemies, but hast asked for thyselfe understanding to discerne judgement; behold I have done according to thy wordes. Lo I have given thee a wise and understanding heart, so that there was none like thee before thee;—and I have also given thee that which thou hast not asked, both riches and honor, so that there shall not be any among the kings like unto thee all thy dayes^c." Whoso asketh wisdom of God shall receive

^a Psal. cxix. 98, 99.
—ver. 12.—ver. 13.

^b Ver. 110.

^c 1 Kings iii. 5, 9.—ver. 10.

a returne with advantage ; much more than he asketh will be graunted to him, as it was heere to Solomon. The apostle incites us to this, “ If any man lacke wisdome,” (as all counsellors and all others doe) “ lett him aske of God ;” and the issue of such prayers followes, “ that giveth to all men liberally, and upbraideth not, and it shall be given him.” Heerwith agree the texts ; “ The feare of the Lord is the beginning of wisdome,” and the instruction of wisdome ; and in Christ are hidden all the treasures of wisdome. Oh ! who would not labour for this treasure^x?

The usual appellation for the hebrew senators was an elder, the which both before and after the giving of the law in Sinai, was taken for one who excelled the rest in dignitie and wisdome. That of Moses calling the elders of the people in Aegipt is, in the Jerusaleme paraphrase, rendred, the wise men of Israel. And where it is said, “ Thou shalt rise up before the hoary head, and honor the face of the old man,” the Arabick reades it, the face of him who is more excellent than thyselfe. Another faith, of the wise man^y ; and of this opinion is Philo, that it means him who is preferred before others, in honor, reward, dignity and wisdome. And speaking of Moses giving the law, he saith, that he used to call those who were antient young men, and those who were not yett old, presbiters or elders ; not respecting the number of years, or the long or short time of their age, butt the faculties of their minds, wisdome and discretion^z. Wherto that of our aldermen, before noted, hath a resemblance.

^x James i. 5.

^y Psal. cxi. 10.—Prov. xv. 33.—Col. ii. 3.

^z Origen. in Eutich. p. 17. — Seld. Uxor Ebraica, lib. i. c. xv. —Exod. xix. 7.—Levit. xix. 32.

^z Philo lib. de Sacrific. Cain et Abel.

The preacher saith, "Woe to thee, O land, when thy king is a childe:" and the prophet denounceth, "I will give children to be their princes, and babes shall rule over them^a." Heeruppon is observed, that Rehoboam, the son of Solomon, was such a young man, bicause he followed the counsell of the young men; he was young in wisdome, not in age, for he is reckoned 41 years of age when he began to raign^b. And, on the contrary, Solomon is supposed to be butt 12 years old, when he began to reigne; butt bicause the Lord gave him wisdome, he is not called a young man^c. Where it is said, "The princes digged the well, the nobles of the people digged it," the Jerusalem Targum reades it, The sanhedrim of wise men, such as princes and nobles are or ought to be.

It is said of Abraham that he was old; the Greeke hath it, an elder or well-stricken in age, of many dayes^d. The text goes on, "And the Lord had blessed Abraham in all things." Of this, Philo saith: "when by divine mercy and wisdome, that part of the rationall soule is rightly disposed, it receives not one only, but all kinds of bleffings; he hath the manners and wisdome of an elder, and so becomes en elder^e."

The 2 epistle of Analectus to the pope hath it thus. "It is said that the beauty of old men is the grey head^f." This grey head is said to signify wisdome, according to that which is written, "The grey head is the wisdome of men^g." "And where we reade (saith the epistle) that men lived above 900 years from Adam, till

^a Eccles. xii. 16.—Isai. iii. 4.

^b 1 Ki. xiv. 21.

^c Num. xxi. 18.

^d Gen. xxiv. 1.

^e Philo lib. Περὶ τῆ ἐξέτηψς Νῶε.

^f Prov. xx. 29.

^g Wis. iv. 8.

Abraham who lived fewer years by many; yett no other was first called presbiter or elder, butt Abraham who lived fewer years by many: not therfore for decrepit old age, but for wisdome are they called elders^h.

The wisdome of Abraham, Isaac, Jacob, Joseph, Moses, Joshua, Samuell, David, Solomon, and of all the holy patriarches, princes and prophets of God, may with highest delight be read in the holy story. Lett all men, especially counsellors, strive to be followers of them.

That comes neere our word, which is expressed of the children of Issachar, which were men that had understanding of the times, to know what Israel ought to doe: and as a consequent therof, it is said, all their brethren were att their commaundementⁱ.

It is said of the graecian king Agesilaus, "What actions of his doe not show his wisdome^k?" In the schoole of the peripateticks was that of "a young man in age and manners, and an old man in wisdome^l."

Jupiter, in a dialogue, sayes, he was a child: Cupid answears, because thou hast neither beard, nor grey haire, therefore wouldest thou be accounted a childe; when in trueth thou art an elder, wise, and subtile^m?

The Phoenicians made themselves a captaine not by hereditary succession, butt by praerogative of merit; whom they called an elder,

^h Hieron. in Isaiam. lib. viii. c. 24.
illius actiones sapientiam non demonstrant?

ⁱ 1 Chron. xii. 32.

^k Quae

^l Arist. Nichomach.

^m Lucian. in Dialog.

not bicaufe of old age, butt for prae-eminence of wifdome and dignity.

The graecian fenates confifted of their wifef and moft discreet men; as their lawes and actions demonstrate, and the patterne of government which they gave unto the Romans and other nations. And fuch an high opinion was had of their fenate of the Areopagitae, that Cicero breakes forth into this extravagant expreffion concerning them: “To deny (faith he) that the world is governed without providence, is as if a man fhould fay, that the Athenians were to be governed without the counsell of the Areopagitae.

Aristotle affirmes, that true wifdome, and foelicity doe confift in the contemplation of God and of heavenly things. Plato agrees heerwithⁿ, and divers heathen authors, even to the fame expreffions which we meet with in the fcripture. Their poet could affirme

That fpeech is beft which doth accorde
With wifdome given from the Lord^o.

According to that of Lactantius, that “all the wifdome of man is in this one thing, to know God and worship him;” and all other wifdome will prove butt vanity^p.

Nazianzen inſtructs us, that “the chiefe wifdome is a commendable life, and a pure heart to God^q.”

ⁿ L. Ethic. 10. c. 7, 8, et Auguſt. lib. iv. de Trin. c. 1. — Lib. iv. de leg. et epiſt. ad Syracum.

^o Phocilides.

Τῆς δὲ θεοπνεύσεως σοφίης

Λόγος ἐστὶν ἀρίστος.

^p Firm. divin. inſtit. lib. ii. c. 30. Omnis ſapientia hominis in hoc uno eſt, ut Deum cognoſcat et colat.

Deum pura mens.

^q In Apol. Prima ſapientia eſt vita laudabilis, et apud

The Romans were great admirers and practisers of wisdom; as their discipline, conquest and government of the world doe testify. In the first institution of their senators, those were to be chosen who were most wise by age, and such as were of eminent wisdom. Their orator sayes, "That nothing is more desirable, nothing more excellent, nothing more worthy a man than wisdom," which is the knowledge of divine and humane things. And Socrates holds, that "amongst all things, which we possesse, wisdom only is immortall." And there is no qualification more essentiall and universall than this of wisdom for counsellors. All nations regard it in the choice of them; and no people so barbarous, butt have a veneration for it'.

' Plut. in Romulo. Per aetatem optimè saperent. — Dionis. lib. ii. Spectatae prudentiae. — Cic. lib. ii. Offic. Sapientia nihil est optabilius, nihil praestantius, nihil homini dignius. — Sola inter omnes possessiones sapientia immortalis est.

And more sufficient men.

THE sufficiency of men, to be members of parlement, contains all necessary qualifications for that employment. I shall in this place only mention that qualification by wealth; the rather, being applyed to the deputies of towns and citties, where they use to say of a rich man, he is a very sufficient man: and the other sufficiencies and qualifications are mentioned on other occasions.

The qualification of wealth was alwayes, and ever will be a great interest to the possessors of it: common reason requires it; and both publique and private interest (which governe all humane affayres) doe bring wealthy men into publique councells, and ingage them in matters of highest and greatest concernement in the generall, as themselves are amongst perticular persons. And the greater mens estates are, the greater their interests are, and the greater is the concernement to them of the acts of councells: and it is just, that they should be admitted to a share in those acts, who have so great a share of interest in the commonwealth which is subjected therunto. Neither can the dependancies uppon rich men, which are usually many, be better satisfied or ordered than by finding their chiefs considerable, and parties to those acts wherby

wherby all are obliged, and wherin the followers hold themselves the more secure from injuries, and yield the more submission to their decrees. From hence might come our law, that all spirituall and temporall lords, by reason of their possessions and baronies held of the king, earles, thaines and barons, had their place in parlement^a. Thus it was in the saxon wittena gemotes; and about the time of the Normans whosoever had thirteen knights fees, and a third part, was by his estate and possessions qualified to come to parlement^b. And those who held by barony, by their renew of 400 markes a yeare, were qualified to be members of parlement; and one may be a parliamentary baron, though he hold by parte of a barony only^c. Butt he must hold (as the law then was) by part of a barony att least, and the certaine number of knights fees did not make an earldome or barony: some who had fewer knights fees than 13, yett were equally barons with the rest; and some who had above 20 knights fees yett butt one earldome. The value of a baron's estate was 400 markes yearly, of an earle 400 l. of a marquis 800 markes, and of a duke 800 l. which was no meane valuation according to those times. Some believe, that every tenant in chiefe, such as were the barones minores, freeholders of such a value in estate, did come in regard therof to parlement.

Some who were posselt of castles were, in that respect, peeres, and qualified to sitt in parlement^d; as the castles of Arundell and

^a Kellaway, f. 184.—Seld. Tit. hon. f. 182, 183, et 2 Tit. hon. f. 695.

^b Cambd. Brit. f. 535.—Seld. Jani, f. 125. et Tit. hon. f. 278.

E. 3. f. 30. pl. 18.

^c 13
^d Seld. Tit. hon. f. 236, 237.—St. W. 3.—18 E. 1. et 9 E. 2. stat. of sherifs, et stat. of templers.—Stat. 1 E. 3. et 5 E. 3. et 15 E. 3. et 20 E. 3. et 25 E. 3. et Westm. 1. et 2.

Abergaveny, which give that honor and privilege to the owners of them. And these, by reason of their wealth and great estates principally, are by severall statutes called the great men of the land.

Some of the jewish authors doe mention, that the members of their sanhedrim ought to be wealthy men; not of an indigent fortune, least they be tempted unto bribery^e. Riches are accompanied with respect, and poverty with temptation and neglect, as the wise man affirmer: "The poore is hated even of his neighbour, butt the rich hath many friends; the rich ruleth over the poore, and the borrower is servant to the lender." Riches and honor goe together, as is testified by many texts: and so it is said of Zachaeus, "he was chiefe among the publicanes; and he was rich^f."

The great philosopher complaines, that in those chiefly who most prevaile in wealth, government and nobilitie useth to be placed^g; and his countrymen were of this opinion, where their chiefe senators and governors had their estimation and preferment much after the rate of their wealth. The people were divided into four rankes according to their riches; and as it is said of Athens, "Out of them all, the magistracy was trusted with those only, who did abound in riches^h."

The like usage was among the Romans, who much regarded riches in the choice of their senators; and for the ground

^e Gemar. Babilon. ad tit. Menacoth. c. vi. f. 65. 1. etc.

^f Prov. xiv. 20.

—1 Chron. i. 11, 12. et xvii. 5. et xviii. 1. et Prov. iii. 16. et viii. 18.—Luke xix.

2. ^g Arist. lib. iv. De repub. c. viii.

^h Gothofred. p. 699. Ex his

omnibus, iis tantum qui opibus abundarent, magistratus credi voluit.

of it one pleads, that "wealth in a senator is commended, least the eminency of the highest ranke should be obscured by want in his owne family." For prevention wherof, before the time of Augustus, the estate of a senator was to be 800,000 sesterces, which makes about 5000*l.* of our money, and that was enlarged to a higher value by Augustus; and he who was not of that value, in his estate, was not capable to be chosen a senator¹.

Seneca notes it in his time, that "Wealth caused men to arise to the degree of senators^k." And the poet observes the same among his countrymen:

"In price the prize now is, and only there
Where riches are, honor and friends appeare;
The poore man lies neglected every where^l."

Butt some hold it not to be so from the beginning; and that the loosnes of the world, and the increase of riches, became a prejudice to the commonweale, "after the senators came to be chosen by their riches^m."

The French say, that the person to be honored with the dignity of a baron ought to have under him a banaret, or 6 knights batchelors, every one of them having 600 frankes

¹ *Laudatur census in senatore, ne splendor amplissimi ordinis rei familiaris angustis obscuretur.*—Suetonius, *Dionis*.
^k *Declam. lib. ii. Senatorum gradus census ascendere facit.*

^l *In pretio pretium nunc est, dat census honores,
Census amicitias, pauper ubique jacet.*

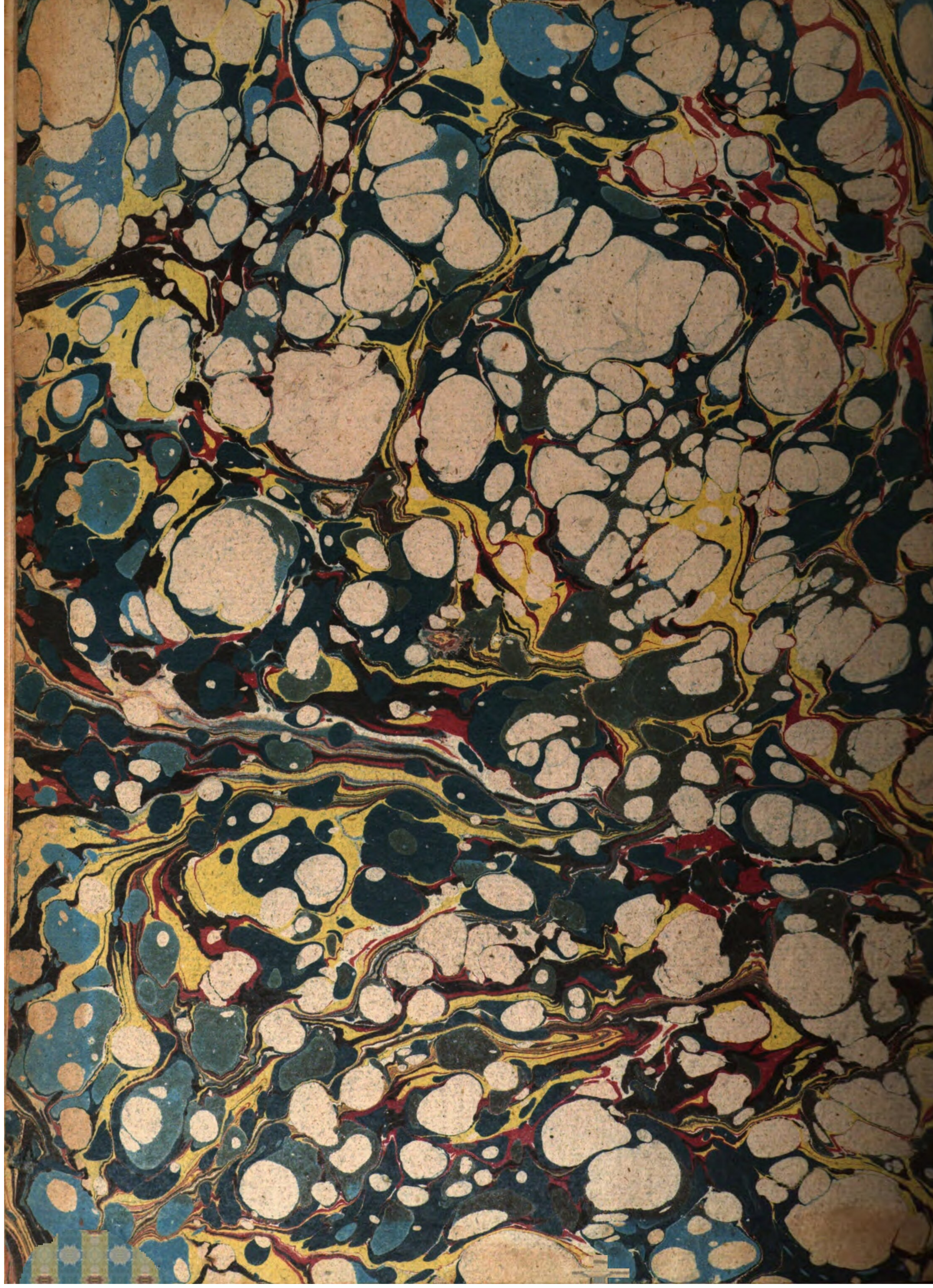
^m *Pliny lib. iv. Prolegom. Postquam senator censu legi coeptus.*

rent, or 4 chafellans; and these were their parliamentary baronsⁿ.

Surely all nations have a sufficient regard to the wealth of their inhabitants, which is oft times more considerable than other interests though in themselves the worthier. It is a qualification requisite for a counsellor for the support of himselfe, the honor of his nation, the contentment of his dependancies, and for preventing of temptations and corruption.

* Tit. hon. Seld. p. 232. 740.

THE END OF THE FIRST VOLUME.







Whitlocke, Bulstrode, 1605-1675

Whitelockes Notes Uppon The Kings Writt For Choosing Members Of Parleмент
XIII Car II Being Disquisitions On The Government Of England By King Lords
And Commons
Bd.: 1

London (1766)

4 Brit. 144-1

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